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Security Council

Distr.: General
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Letter dated 24 October 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 6 August 2002 (S/2002/903).

The Counter-Terrorism Committee has received the attached supplementary report (see annex) from Portugal, submitted pursuant to paragraph 6 of resolution 1373 (2001).

I would be grateful if you could arrange for this letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

02-66336 (E) 011102

Annex

Letter dated 17 October 2002 from the Permanent Representative of Portugal to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

At the request of my Government, I have the honour to transmit to you the second report to be submitted by Portugal to the Counter-Terrorism Committee pursuant to paragraph 6 of resolution 1373 (2001) (see enclosure).

I should be grateful if you would arrange for the present letter and its enclosure to be circulated as a document of the Security Council.

(*Signed*) Gonçalo **Santa Clara Gomes**
Permanent Representative of Portugal to the United Nations

Enclosure

National report to the Security Council Counter-Terrorism Committee (supplementary clarifications)

Subparagraph 1 (a)

☐ The Portuguese Criminal Code (PCC) **does not include an express definition of terrorist act**, although such definition is implied in the definitions of terrorist group/organisation (Article 300, paragraph (2)) and terrorism (Article 300, paragraph (1)).

Thus, a terrorist organisation is defined as any group of two or more persons who, acting in coordination, seek to:
Jeopardize national integrity or national independence,
Prevent, alter or subvert the functioning of State institutions provided for under the Constitution,
Force public authority to practice an act, abstain from practicing it or tolerate its practice,
or yet to intimidate certain persons, groups of persons or the general population through the practice of certain crimes.
A penalty of imprisonment of 5 to 15 years is applicable.

It is defined as practicing individual acts of terrorism anyone who, acting with the above mentioned purposes, practices crimes:

- Against life, physical integrity or personal freedom;
- Against the safety of transportations and communications, including telegraphic, telephonic, radio or TV communications;
- Deliberate creation of common danger, through fire, dissemination of radioactive substances or toxic or suffocating gases, flood or avalanche, collapse of building, contamination of food and water for human consumption or diffusion of disease, plague or harmful plant or animal;
- Of sabotage;
- Which imply the usage of nuclear energy, firearms, explosive substances or devices, firebugs of any kind, trapped parcels or letters.

A penalty of 2 to 10 years of imprisonment is applicable.

It should be noted that such an **absence of definition of terrorist act seems intentional** since the joint application of PCC Articles 300, 301 and 299 (2) encompasses a number of different acts and activities, of whatever nature (even non criminal), within the limits imposed by the principles of legality and typicity and provided that such acts or activities pursue a criminal intent, inter alia terrorist purposes.

The Criminal Code penalizes, as provided for under Article 299 (2), acts that are not inherently criminal – for example, fund collection – but **are connected** with criminal acts, in particular of a terrorist nature. Thus, **acts of financing terrorism are legally repressed** both under PCC Article 300 (1) (**promotion of or support to** terrorist group, regardless of the kind of support given) and under Article 300 (5)

(**preparatory act to establish** a terrorist group). The first are punished with 1 to 5 years of imprisonment; the second with 1 to 8 years of imprisonment.

Pursuant to PCC Article 5, Portuguese criminal law shall apply to crimes committed outside national territory in the case of crimes provided for under Articles 300 (terrorist group/organisation) or 301 (terrorism).

This is an exception to the principle of territorial competence and allows that an investigation is initiated whenever there are reliable grounds to believe that a person or entity is somehow promoting the financing of terrorist groups acting exclusively abroad. Articles 300 and 301 are not subject to the restrictions on the application of Portuguese law specified in PCC Article 6.

□ Portuguese legislation currently in force is essentially aimed at combating the laundering of money **derived from illicit acts**; however, its dispositions also provide for the **combat of related phenomena, such as the financing of terrorism** – as established under Article 2 of Act 10/2002, which added Articles 8-A to 8-D to Decree Law 325/95. This Decree Law refers to Decree Law 313/93, which transposed into the Portuguese legal order EEC Directive 91/308 (prevention of the use of the financial system for the purpose of money laundering).

From the joint reading of these instruments, we conclude that the obligation to report suspicious transactions or those above certain amounts **applies to, besides financial bodies**, the following entities: casinos, real estate agencies, accountants, external auditors, security transporters, notaries, real estate and commercial registrars, as well as dealers on antiques and art, precious metals and stones, aircraft, ships and cars (Articles 4 to 8-C of Decree Law 325/95).

Failure to fulfil such an obligation, even if in a negligent manner, entails a misdemeanour; applicable fines can go up to € 500,000.

Failure to fulfil the duty of report foreseen on PCC Article 242 also entails, besides a misdemeanour, disciplinary or criminal responsibility on the part of officers, as defined in PCC Article 386, including **notaries and public legal persons** through their legal representatives.

Concerning lawyers, in accordance with the Law Society Statute combined with EC Directive 2001/97, these independent legal professionals have the duty to report any crime they become aware of, inter alia operations that they suspect are related to terrorist activities, without prejudice to professional confidentiality that must be safeguarded in relations with their clients.

Subparagraph 1 (b)

□ Portugal ratified, on 2. August 2002, the Convention for the Suppression of the Financing of Terrorism. It is presently being studied the possibility of introducing amendments into the Portuguese criminal law with the view to ensure the full compatibility of the Portuguese legal framework with the provisions of this Convention, without prejudice to what is said under subparagraph 1 (a).

In case such amendments are deemed necessary, in particular due to the requirement of typifying criminal law provisions, the Government shall, through the Ministry of Justice, submit relevant proposals to Parliament, for approval.

Subparagraphs 1 (c) and (d)

□ Applicable measures, regardless any existing list, are indicated under subparagraph 1 (a) in relation to money laundering.

However, the freezing of funds in Portugal, in situations other than those which fall under international obligations assumed by the Portuguese State, that is to say, in cases other than those concerning persons and entities identified in lists issued by bodies whose competence thereto has been recognized by Portugal (Article 8 (3) of the Portuguese Constitution) is possible **only within legal proceedings***.

Thus, **there are no administrative procedures for the freezing of funds**, even for purposes of criminal investigation and with no relation to the practice of specified crimes.

Still within crime prevention, it is possible to take measures aimed at validating suspicions of links with terrorism: in these cases, freezing can be determined after the necessary criminal proceeding is initiated and the subsequent judicial order to investigate is issued.

□ Funds derived from licit activities can pose problems, namely within financial operations, given that legislation in force does not currently impose on banks and other financial institutions the duty to report operations suspected of financing terrorism, but only the duty to report those in relation to which there is evidence that suggests a link to terrorist activities.

Portuguese law, however does not foresee special surveillance mechanisms for this purpose. In case funds belong to legal persons, inter alia of civil nature such as foundations or "charity" associations constituted in Portugal, authorities can extinguish such legal person in case the funds are used for illegal purposes (Articles 157, 182 and 192 of the Civil Code).

□ As stated above, although the procedure to waive bank and tax secrecy in relation to several crimes, inter alia of terrorism (Act 5/2001, of 31 October) has been swifted and implemented, **such procedure depends on a judicial warrant**.

Thus, currently there are no specific surveillance measures or legislation in place to ensure that funds or other economic resources collected for religious, cultural or charitable purposes are not diverted to other purposes, inter alia the financing of terrorism.

Regulation EU/2580/01 provides for the freezing of accounts and assets belonging to persons indicated in the lists issued by the European Union, that are found in banks and credit institutions operating in Portugal; regulation EU/881/02 provides for the same procedure in relation to persons/entities indicated in UN lists (Taliban, Al-Qaeda and associates).

Notwithstanding, in relation to entities that, outside the scope of common civil law, wish to be incorporated as religious legal persons, non governmental organisations or private institutions of social solidarity (IPSS), a specific legal framework applies.

Under such specific legal framework, which provides essentially for the granting of tax benefits, there are a number of obligations concerning registry and supervision, more restrictive in the case of NGOs and IPSS.

It should be underlined that a survey has been made of the 505 religious legal persons, 4055 IPSS and 93 NGOs for Development existing in Portugal, and there are no reasons to believe that, in any way, a possible deviation of funds is related to financing terrorism.

□ The General Legal Framework on Credit Institutions and Financial Societies (Decree Law 298/92) defines, in its Articles 3 and 6, respectively, the various types of credit institutions and financial societies. It provides that services of fund remittance or transfer are subject to previous authorisation issued by the Bank of Portugal – therefore, **alternative services, such as hawala or hundi, are expressly prohibited**. Portuguese authorities are not aware of the existence of these services in Portugal which leads to assuming that, in case they exist, they should be of reduced importance.

Subparagraph 2 (a)

□ It is true that the exception to the principle of territorial competence (subparagraph 1 (a)) does not seem to be wide enough to encompass transnational situations in which offended values are not of national character.

However, Portuguese criminal law is governed by, besides the principles of territorial competence, national interest and nationality, also the principles of universal application and plurality in the practice of crime. These principles can always be used to get around some difficulties of this kind, in cases of:

- criminal proceedings initiated in another State within which the freezing of assets in Portugal is required through legal processes;
- direct application of international conventions ratified by Portugal;
- transposition into the Portuguese legal order of the provisions of such conventions.

□ Besides the above mentioned measures, and at the risk of seeming redundant, reference should be made to:

- Preventive measures aimed at the banking and financial system, inter alia FATF's Special Recommendations on Terrorist Financing;

- General and specific crime prevention policy on which the Portuguese Criminal Law is based and that in itself dissuades the practice of acts considered illicit in the light of legislation currently in force;

- A special regime, foreseen in the Code of Criminal Procedure, which provides for the waiving of judicial authorisation previous to searches and personal searches, telephone tapping and detentions, in circumstances other than flagrant delict, in case there is evidence sustaining the practice of a crime of terrorism (among others);

- The Internal Security Act, which provides for the closure of, inter alia, companies and groups which dedicate themselves to highly organised crime, namely terrorism, or to the preparation, training or recruitment of persons for such purposes.

- Act 101/2001, which allows criminal investigation authorities to undertake undercover actions, provided that these are proportional to the aims of criminal investigation and the gravity of crime;

□ Although law does not define "good cause" (Decree Law 399/93), the Legal framework on Weapon Use and Carrying (Act 22/97) makes the issuing/renewal of licences concerning defence weapons conditional to the requester being above 21 years of age and fulfilling all the following requisites:

- Is in full capacity to exercise all his or her civil and political rights;

- Proves that he or she needs such licence due to professional reasons or personal defence imperatives;

- Has not been subject to security measures of judicially condemned for the practice of crimes, inter alia, of terrorism or terrorist organisation;

- Is subject to medical examination, psychological tests and skills tests and meets the requirements set therein.

Licences shall immediately expire in case the weapon is used for a different purpose than that it is aimed at.

Those who possess a defence or hunting weapon without the necessary licence, or transmit such weapon to someone who does not have a licence thereto, shall be punished with imprisonment of up to 2 years or fine of up to 240 days.

Subparagraph 2 (b)

- The Security Coordination Office (dependant upon the Ministry for Internal Affairs by delegation of the Prime Minister) ensures the operational coordination of Security Forces and Services (FSS). Such coordination focuses on large-scale operations, such as Euro 2004, and weekly exchanges of crime statistics.

After September 11, a task force was created within this system to elaborate a weekly document on the Evaluation of Terrorist Threats in national territory.

- Concerning general information (prevention), the coordination is incumbent upon the Ministry for Internal Affairs' Consultative Council, in which all security forces and services sit to provide advice on internal security matters.

- The exchange of operational information, on a case-by-case basis, does not go through the Security Coordination Office (enlarged forum of operational coordination), but is rather processed on a bilateral level, in accordance with the principles of "need to know", secrecy of criminal investigation and data protection of the concerned persons.

Thus, the repression of terrorism financing is made between the Judiciary Police (PJ) and the national financial system (banks and insurance companies) – Ministry of Finance, Bank of Portugal and Portuguese Insurance Institute. At this operational level, information necessary for purposes of criminal investigation is exchanged in direct bilateral contacts between judicial authorities (Public Prosecution/Judiciary Police) and banks (Act 5/2002).

There is always a special duty of collaboration among security forces and services in what concerns the exchange of information on matters related to the protection and safeguard of internal safety, as well as repression of terrorism.

Therefore, each entity has the duty to communicate to the legally competent body in a given case, all facts or information of mutual interest or those that concern the recipient solely: the Security Information Service (SIS) cooperates with the security forces and services (FSS), the Judiciary Police with other FSS and public bodies with competence on matters related to internal safety.

Finally, it should be noted that the Civil Protection System – which acts in coordination with the Emergency Civil Planning System (Prime Minister/Ministry of Defence)- works in parallel with the Internal Security System (see Framework Law on Civil Protection, Annex III, article 14). Armed forces, security forces and services and fire brigades, among others, are civil protection agents.

Subparagraph 2 (c) * http://www.gddc.pt/cooperacao/materia-penal/mpenal-ce.html

MUTUAL LEGAL ASSISTANCE ON CRIMINAL MATTERS

- **Multilateral agreements:**

- European Convention on mutual assistance in criminal matters and its Additional Protocol, Council of Europe (ratified in 1994) and Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union;
  European Convention on Extradition (ETS no. 24) (open for signature on 13.12.1957; entry into force: 18.04.1960)

- Additional Protocol to the European Convention on Extradition (ETS no. 086) (open for signature on 15.10.1975; entry into force: 20.08.1979)
- Second Additional Protocol to the European Convention on Extradition (ETS no. 098) (open for signature on 17.03.1978; entry into force: 05.06.1983)
- European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders (ETS no. 051) (open for signature on 30.11.1964; entry into force: 22.08.1975)
- European Convention on the control of the acquisition and possession of firearms by individuals (ETS no. 101) (open for signature on 28.06.1978; entry into force: 01.07.1982)
  Objects comprised in Annex I, paragraphs 1 items (j) to (n), 2 and 3
- Convention on the Transfer of Sentenced Persons (ETS no. 112) (open for signature on 21.03.1983; entry into force: 01.07.1985)
- Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS no. 141) (open for signature on 08.11.1990; entry into force: 01.09.1993)

- **Bilateral agreements:**

SPAIN

- Agreement on transborder persecution, celebrated with Spain in 1998;
- Agreement on the Repression of Illicit Drug Trafficking by Sea, celebrated with Spain in 1998
- Agreement on Legal Assistance on Civil and Criminal Matters, celebrated with Spain in 1997
- Agreement on the Creation of Mixed Frontier Posts, signed on 19.11.1997
- Agreement on the Re-admittance of Persons in an Irregular Situation, signed on 15.02.1993
- Protocol Agreement on Police Cooperation, signed on 09.03.1992
- Agreement on Cooperation in Combating Drug Trafficking, celebrated with Spain in 1987

FRANCE

- Agreement on the Re-admittance of Persons in an Irregular Situation, celebrated with France and signed on 08.03.1993

THE NETHERLANDS

- Agreement Relating to the Privileges and Immunities Necessary to Perform Official Duties of Europol Liaison Officers

SWITZERLAND

- Agreement relating to Mutual Treatment in the field of Residence Permits, signed on 12.04.1990

BULGARIA

- Agreement on the Re-admittance of Persons in an Irregular Situation, celebrated with Bulgaria and signed on 20.10.1997

HUNGARY
- Agreement on the Re-admittance of Persons in an Irregular Situation, signed on 28.01.2000

LITHUANIA
- Agreement on the Re-admittance of Persons in an Irregular Situation, signed on 11.02.1999

RUSSIAN FEDERATION
- Cooperation Agreement on Crime Combat, celebrated with the Russian Federation in 2001

ANGOLA
Cooperation Agreement on the Combat to Illicit Trafficking in Drugs and Psychotropic Substances, and Related Crime, celebrated with Angola in 1995
- Cooperation Agreement on Legal and Judicial Matters, signed on 30.08.1995

BOTSWANA
- Agreement on Extradition, signed on 06.02.1970

CAPE VERDE
- Technical Cooperation Agreement on Police Matters, signed on 13.06.1988

GUINEA-BISSAU
- Agreement on Legal Cooperation, signed on 05.07.1988
- Additional Protocol to the Agreement on Legal Cooperation, signed on 05.03.1989

MOZAMBIQUE
- Cooperation Agreement on the Combat to Illicit Trafficking in Drugs and Psychotropic Substances, and Related Crime, celebrated with Mozambique in 1995
- Cooperation Agreement on Legal and Judicial Matters, signed on 12.04.1990
- Additional Protocol to the Cooperation Agreement on Legal and Judicial Matters, signed on 26.06.1990

SAO TOME AND PRINCIPE
- Agreement on Judicial Matters, signed on 23.03.1976
- Additional Protocol to the Agreement on Judicial Matters, signed on 18.07.1997
- Cooperation Protocol relating to the Establishment of a Training and Investigation Centre on Legal and Judiciary Matters, signed on 11.09.1992

MOROCCO

- Convention on Legal Cooperation in Criminal Matters, celebrated with Morocco in 1998

Convention on the Assistance to Detainees and Transfer of Sentenced Persons, celebrated with Morocco on 1998

Cooperation Agreement on the Fight against Terrorism and Organised Crime, signed on 28.04.1992

TUNISIA

- Treaty on Mutual Legal Cooperation in Criminal Matters, celebrated with Tunisia in 1998

ARGENTINA

- Convention for the Prevention of Undue Use of, and Repression of Illicit Trafficking in Drugs and Psychotropic Substances, celebrated with Argentina in 1997

BRAZIL

- Treaty on Mutual Legal Cooperation in Criminal Matters, celebrated with Brazil in 1991

Cooperation Agreement to Reduce Demand, Combat Production and Repress Illicit Trafficking in Drugs and Psychotropic Substances, celebrated with Brazil in 1991

Treaty on Mutual Cooperation in Criminal Matters, signed on 07.05.1991

Treaty on Extradition, signed on 07.05.1991

Cooperation Agreement to Reduce Demand, Combat Production and Repress Illicit Trafficking in Drugs and Psychotropic Substances, signed on 07.05.1991

Friendship, Cooperation and Consultation Treaty, signed on 22.04.2000

CANADA

- Treaty on Mutual Assistance in Criminal Matters, celebrated with Canada in 1997

CUBA

- Agreement on Cooperation in Preventing the Undue Use of, and Repressing Illicit Trafficking in, Drugs and Psychotropic Substances, celebrated with Cuba in 1998

MEXICO

- Treaty on Mutual Legal Cooperation in Criminal Matters, celebrated with Mexico in 1998

URUGUAY

- Convention on Preventing the Undue Use of, and Repressing Illicit Trafficking in, Drugs and Psychotropic Substances and their Precursors and Essential Chemical Products, celebrated with Uruguay in 1998

VENEZUELA

- Agreement on Prevention, Control, Monitoring and Repression the Undue Use of, and Illicit Trafficking in, Drugs and Psychotropic Substances, celebrated with Venezuela in 1994

AUSTRALIA
- Treaty on Mutual Legal Cooperation in Criminal Matters, celebrated with Australia in 1989

MACAO
- Agreement on the Transfer of Sentenced Persons, signed on 07.12.1999

THAILAND
- Treaty of Cooperation in the Execution of Criminal Sentences, signed on 01.04.1985

EXTRADITION

- **Multilateral framework:**

- European Convention on Extradition and its two Additional Protocols (Council of Europe);
- Convention Relating to Extradition between Member States of the European Union;
- Convention on simplified extradition procedures between the Member States of the European Union

- **Bilateral framework:**

BOTSWANA
- Agreement on Extradition, celebrated with Botswana, 1970

CAPE VERDE
- Judiciary Agreement and its two Protocols, celebrated with Cape Verde, in 1976 and 1982

TUNISIA
- Treaty on Extradition, celebrated with Tunisia in 1998

Argentina
- Convention for the Mutual Extradition of Criminals, celebrated with Argentina in 1998

Bolivia
- Treaty on Trade, Navigation and Extradition, celebrated with Bolivia in 1879

Brazil
- Treaty on Extradition, celebrated with Brazil in 1991

USA

- Convention on Extradition, celebrated with the United States of America in 1908

Mexico
Treaty on Extradition, celebrated with Mexico in 1998

Australia
Treaty on Extradition, celebrated with Australia in 1989

Subparagraph 2 (d)

No specific amendments were introduced into Portuguese legislation concerning the fight against terrorism, because the Portuguese legal framework (as described in subparagraph 2 (a)) allows the intervention of authorities even in those situations when terrorist threats are to be effected outside Portugal. The only change introduced after the 11. September was provided for under Act 10/2002, which improves mechanisms related to the fight against money laundering and, extensively, financing. Thus, new cooperation bonds were established and the previously existing ones between Portuguese authorities and similar foreign authorities reinforced. The Portuguese presence in multilateral bodies concerned with combating crime was also reinforced. It should be noted, in this regard, the work developed by Portugal within the Europol task force.

Subparagraph 2 (f)

□ International legal cooperation on criminal matters is regulated, in Portugal, in accordance with Acts 144/99 and 104/2001, which apply on a subsidiary basis in the absence of an international instrument binding upon the Portuguese State.

Law does not establish any deadline to reply to legal assistance requests submitted by other countries. Their fulfilment depends, among other aspects, on the steps to be taken, necessary human or technical resources and degree of complexity of investigations to undertake. Without prejudice to the above, one can say that, in average, such requests can be fulfilled within 30 days.

The principle of reciprocity is inscribed in Article 4 of Act 144/99, updated by Act 104/2001. It provides that the Ministry of Justice shall request a guarantee of reciprocity, if applicable, and can grant it to other States. The lack of reciprocity, however, does not prevent the fulfilment of a request for cooperation, proving that is advisable in view of the nature of the fact or the need to fight against certain forms of crime, including terrorism.

Subparagraph 2 g)
See reply to subparagraph 2 (b)

Subparagraph 3 (c)

□ The celebration of specific bilateral agreements on the prevention and repression of terrorism has not been the usual practice of Portugal. We shall note solely the Agreement on Cooperation on the Fight against Terrorism and Organised Crime, celebrated with Morocco in 1992.

However, bilateral agreements concluded with other States concerning legal cooperation in criminal matters also include provisions on the prevention, detection and repression of terrorism and terrorist groups/organisations, as happens, inter alia, in the Cooperation Agreement on Crime Combat, celebrated with Russia in 2000 (in this regard, see reply to subparagraph 2 (c), which includes the list of bilateral agreements and treaties celebrated by Portugal on extradition and mutual legal assistance).
[At the European Union level, and within the framework of its Plan of Action in this field, reference should be made to the recent decision to introduce into all cooperation/association agreements celebrated with third States, a clause on terrorism].

Subparagraph 3 (d)

- Portugal ratified all 12 UN Conventions relating to terrorism.

- As stated above, whenever necessary, Portugal enacts the legislation required to implement in its internal legal framework the provisions of international legal instruments Portugal is a party to. Possible amendments to the Criminal Code are presently under consideration, in view of the forthcoming entry into force of the United Nations Convention for the Suppression of the Financing of Terrorism, ratified by Portugal on 2 August 2002.

Subparagraph 3 (e)
As mentioned above in reply to subparagraph 2 (e), Act 144/99 shall apply on a subsidiary basis in the absence of international legal instruments on the matter binding upon the Portuguese State. Pursuant to Article 31, extradition can take place for purposes of criminal prosecution or enforcement of a penalty or security measure involving deprivation of liberty for a crime that courts of the requesting State are competent to try. For any of these purposes, the surrender of the requested person is only admitted in respect of offences, including attempted offences, that are punishable under both the Portuguese law and the law of the requesting State by a sanction or measure involving deprivation of liberty for a maximum period of at least one year.

Thus, such provision encompasses crimes of terrorist organisation or terrorism, foreseen under Articles 300 and 301 of the Criminal Code, in view of the penalties applicable in abstract to authors of such crimes.

Subparagraph 4
- Since 11 September 2001, many of the concerns expressed in paragraph 4 of Security Council resolution 1373/02 have been addressed in various statements and declarations made by Portugal in several occasions, inter alia within the Portuguese Presidency of OSCE and the Iber-American Summit.

United Nations S/2002/1191

Security Council

Distr.: General
24 October 2002

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Letter dated 24 October 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 22 July 2002 (S/2002/813).

The Counter-Terrorism Committee has received the attached supplementary report from Trinidad and Tobago submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

02-66358 (E) 041102

Annex

Letter dated 24 September 2002 from the Chargé d'affaires a.i. of the Permanent Mission of Trinidad and Tobago to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

I have the honour to refer to your letter of 24 June 2002 in which you highlighted the areas of the report of the Government of the Republic of Trinidad and Tobago submitted pursuant to paragraph 6 of resolution 1373 (2001) about which the Counter-Terrorism Committee had requested further information.

I now transmit herewith the supplementary report of the Government of the Republic of Trinidad and Tobago for the consideration of the Counter-Terrorism Committee (see enclosure).

I wish to assure you of the commitment of the Government of the Republic of Trinidad and Tobago to working with you and the Committee to do our part to eradicate terrorism from our world.

(*Signed*) David **Edghill**
Chargé d'affaires, a.i.

Enclosure

The Republic of Trinidad and Tobago

Supplementary report of the Republic of Trinidad and Tobago to the United Nations Counter-Terrorism Committee in relation to resolution 1373 (2001)*

QUERY:

Sub-paragraph 1 (a):

- The CTC would welcome:
  - a copy of, or an internet reference to, the proposed Anti-Terrorism Bill; and
  - a progress report on its enactment and implementation.

RESPONSE:

Unfortunately, the Anti-Terrorism Bill of Trinidad and Tobago has not yet been put on the Internet. As soon as this is done CTC will be informed of the website.

The Bill has been prepared and is currently being streamlined. The Bill will be one of the matters which will be laid in Parliament for approval whenever that Body convenes in the future.

The proposed Anti-Terrorisms Bill contains many stringent provisions and is based on the United Nations Security Council Resolution 1372 (2001) of September 28, 2002. The Government of Trinidad and Tobago will shortly give the final approval on the draft legislation before it is laid in Parliament.

The Government may consider other legislation in the CARICOM region and, will consider making appropriate adjustments to the present draft Bill prior to laying it in Parliament.

* The enclosures are on file with the Secretariat and are available for consultations.

QUERY:

Sub-paragraph 1 (c)

- Which are the offences, apart from drug-trafficking, in respect of which restraint orders for the freezing of assets may currently be made under the Proceeds of Crime Act, 2000?

RESPONSE:

Freezing of Assets under the Proceeds of Crime Act, 2000 for Offences other than Drug Trafficking

The Proceeds of Crime Act, 2000 provides for the restraint and freezing of assets that are obtained from the commission of a specified offence. A specified offence is defined as an indictable offence (serious offence) or an offence specified in the Second Schedule. The Second Schedule refers to certain offences under the Income Tax Act, the Value Added Tax Act and the Copyright Act. Please see attached copy of 2nd Schedule.

QUERY:

Sub-Paragraph 1 (d)

- Is there any provision in the current law of Trinidad and Tobago or in the proposed Anti-Terrorism Bill dealing with the following matters;

  - a requirement for financial institutions, other intermediaries (e.g. lawyers) and other natural or legal persons to report suspicious transactions to the relevant authorities;

  - controls and surveillance measures to ensure that funds and other economic resources collected for religious, charitable or cultural purposes are not diverted for other purposes, particularly for financing terrorism;

  - regulation of alternative remittance systems, including systems of, or similar to, the kind known as hawala.

RESPONSE:

Mechanisms in the Proposed Anti-Terrorism Bill

The Financial Obligations Regulations, which are awaiting introduction into Parliament, require financial institutions to report suspicious transactions to the Designated Authority.

The Terrorism Bill will provide for controls and surveillance measure to monitor the diversion of funds for financing terrorism.

A policy directive is at present being awaited with respect to the legislation.

QUERY:

Sub-paragraph (2) (a):

- Will provision be made in the proposed Anti-Terrorism Bill to prevent descriptive activities such as:
  - recruitment based on a representation to the recruit that the purpose of the recruitment is one (e.g. teaching) different from the true purpose; and
  - collection of funds through front organizations?

RESPONSE:

Prevention of Deceptive Activities in the Proposed Anti-Terrorism Bill

The Military Training Prohibition Act prohibits recruitment of individuals by unauthorized bodies for military or Para-military training. Recruitment for the ultimate purpose of terrorism will be prohibited and punishable under the Anti-Terrorism Bill.

OPERATIVE PARAGRAPH 2
Sub-paragraph (b)

- Please describe the mechanism for inter-agency coordination between the authorities responsible for narcotics, financial tracking and security, in particular with regard to border controls to prevent the movement of terrorist groups.

RESPONSE:

The National Security Council Secretariat (NSCS) was created to service the National Security Council and is responsible for coordination and tasking. NSCS oversees the production of threat assessment and advice for the NSC; the proposal of intelligence requirements and priorities to the NSC; the tasking of the work of the intelligence community and the co-ordination of daily meetings and briefings with the Heads of relevant Agencies and Departments within the Ministry of National Security.

The Joint Operations Coordinating Centre (JOCC) is responsible for the coordination of operations in response to joint intelligence.

It should be noted that Trinidad and Tobago, being an island, does not share land borders with any territory. At the southern most part of the island we share territorial waters with Venezuela. The districts of Cedros and Icacos, which are situated in the county of St. Patrick, are approximately seven nautical miles from the coast of Venezuela

There is a security complex building at Cedros which houses a Coast Guard base, Immigration and Customs offices. The Coast Guard has the role of carrying out marine surveillance in all the southern most areas. However, being an island state, marine surveillance around the island requires a number of serviceable Coast Guard vessels, which is not always possible. The Coast Guard is responsible for the marine surveillance in the waters of Trinidad and Tobago.

QUERY:

Please describe the mechanism available in Trinidad and Tobago to provide early warning of anticipated terrorist activity to other States.

RESPONSE:

At present, Trinidad and Tobago, through its Security Intelligence Agency, maintains active regional and international liaison relations with other States and selected agencies in more than fifty (50) countries worldwide. When there is an analysis of anticipated terrorist activity, information will be transmitted by the SIA via secure facsimile or electronic mail to the liaison contact in the targeted State.

QUERY:

Sub- Paragraph 2 (e):

- What is the competence of the courts of Trinidad and Tobago to deal with criminal acts of each of the following kinds:

  - an act committed outside Trinidad and Tobago by a person who is a citizen of, or habitually resident in, Trinidad and Tobago (whether that person is currently present in Trinidad and Tobago or not);

  - an act committed outside Trinidad and Tobago by a foreign national who is currently in Trinidad and Tobago.

RESPONSE:

Competence of Courts in Trinidad and Tobago

The primary basis of Trinidad and Tobago's criminal jurisdiction is territorial, which follows from the English criminal jurisdiction. Therefore, apart from any statutory exceptions, the courts are not concerned with any conduct abroad. This means that the courts do not intend to make any conduct taking place outside the territorial jurisdiction of Trinidad and Tobago an offence triable in the courts of Trinidad and Tobago.

It must be noted however where an offence is committed abroad, but it results in harmful consequences to Trinidad and Tobago, the courts may have jurisdiction over the offender. This was established in **Liangsiriprasert v United States Government and another [1990] 2 All. ER 867,** where it was held: "There was nothing in precedent, comity or good sense which prevented the common law from being regarding as justiciable in England inchoate crimes committed abroad which were intended to result in the commission of criminal offences in England since an overt act was not necessary to found the jurisdiction and to wait until some overt act was performed in pursuance of the conspiracy would defeat the preventative purpose of the crime of conspiracy. Accordingly, a conspiracy entered into abroad to commit a crime in England was a common law crime triable in England."

However under extradition laws, a country in which a crime was committed may make a request to have the offender extradited to that country to stand trial.

Under the Extradition (Commonwealth and Foreign Territories) Act 1985, a person who has committed an extraditable offence and has been located in Trinidad and Tobago may be arrested in accordance with the provisions of the Act and be returned to the declared Commonwealth or Foreign Territory.

QUERY:

Sub-paragraph 2 (f):

- What is the legal time frame within which a request for judicial assistance in criminal investigations or criminal proceedings (especially those relating to the financing or other support of terrorist acts) must be met and how long, on average, does it actually take in practice to implement such a request in Trinidad and Tobago?

RESPONSE:

Legal Time Frame for Judicial and Investigate Assistance

Mutual Legal Assistance requests are answered with a time frame of four to six weeks (4 - 6 weeks). This is however, dependent on the nature of the request and the intensity of the investigations required.

QUERY:

Sub-Paragraph 2 (g)

- The CTS would welcome a progress report on the action taken to overcome the deficiencies in border control mentioned in the report.

- What measures have been taken to prevent the counterfeiting, forgery or fraudulent use of identity papers and travel documents (as distinct from the punishment of persons who do so)?

RESPONSE:

COUNTERFEIT/FORGERY/FRAUDULENT USE OF IDENTITY PAPERS/TRAVEL DOCUMENTS

A new type of Trinidad and Tobago passport was introduced in February 1994. This new type passport has many security features:

- Bio-data page is now laminated
- Built-in features in pages e.g. coat of arms are integrated into the pages which shows up under Ultra Violet light
- Special thread is used to stitch the pages which reacts under Ultra Violet light
- Passport number is now perforated on all pages.

With the introduction of the new type of Trinidad and Tobago passport all airline personnel involved in the processing of passengers were exposed to some form of training highlighting the security features of this passport. Police Officers of the Organized Crime and Narcotics Unit (OCNU) at Piarco International Airport also underwent training sessions.

The new Trinidad and Tobago passport did not eliminate the incidents of altered Trinidad and Tobago passports as several cases have been detected, e.g.

(a) Photo substitution

(b) Page substitution

(c) Changes in bio-data

The use of fraudulent identity papers such as birth certificates and deed polls to obtain Trinidad and Tobago travel documents have dwindled as Immigration Officers have been more alert when examining these documents, particularly with regard to the signature to the signatures of the Registrar General or persons acting on his/her behalf. All applications to which Deed Polls attached are referred to the Registrar General's Department to verify that such documents were duly registered.

All applicants including those applying for passports on behalf of their children are required to appear in person. There have been no known cases of counterfeit Trinidad and Tobago passport.

As at 30/06/02 fifty one (51) cases of altered Trinidad and Tobago passports were brought to the attention of the Immigration Department at Piarco International Airport.

Hereunder are the statistical details

No. of Cases	Nationality of Persons/Cases		Types of Alterations
51	Guyanese	41	(a) Photo substitution
	Colombian	1	(b) Page substitution with U.S. Visa
	Trinidadian	9	(c) Change of bio-data

Immigration Officers have received training from the United States Department of State on International Travel Document Fraud Investigations. The last course was held in October 2001. One aspect of this course covered the identification of fraudulent types of passports a number of countries worldwide.

In addition, the course also dealt with the identification of counterfeit United States Resident Alien Cards.

QUERY:

OPERATIVE PARAGRAPH 3
Sub-Paragraph (a)

- Please provide a progress report on the review of international conventions and related legislation mentioned in relation to this sub-paragraph

RESPONSE:

A proposal is currently under consideration for the review of international conventions and related legislation. However, such an exercise has not commenced to date, except for the changes in the local legislation. The information requested will be provided as soon as this exercise has been completed.

QUERY:

Sub-paragraph 3 (c)

- Please confirm the CTC's understanding that the Extradition (Commonwealth and Foreign Territories) Act, 1985 applies on a non-treaty basis to Commonwealth countries but is dependent on treaties for its application to other countries.

- With which countries, apart from the United States of America, the United Kingdom and Canada, does Trinidad and Tobago have bilateral treaties on mutual assistance in criminal matters? Are any others in contemplation?

- Does Trinidad and Tobago plan to enter into extradition treaties with any countries apart from the United States of America?

CTC'S UNDERSTANDING OF EXTRADITION (COMMONWEALTH AND FOREIGN TERRITORIES) ACT 1985

Under the Extradition (Commonwealth and Foreign Territories) Act 1985, Part II of this act 3 (1) states "The Attorney General may, by order subject to the negative resolution of Parliament, declare a Commonwealth territory other than Trinidad and Tobago to be a Commonwealth Territory(hereinafter referred to as a declared Commonwealth Territory), in relation to which this act applies." Please note that in relation to relation to foreign territories, there must be a bilateral treaty which states the terms and conditions of extradition.

With the exception of those countries listed in the query, (U.S.A., United Kingdom and Canada), the Government of Trinidad and Tobago has not negotiated any other Mutual Assistance in Criminal Matters treaties. However it is anticipated that such treaties with Latin American countries especially, Venezuela, Colombia, Mexico and Costa Rica will be negotiated in the near future with Venezuela.

The Government of Trinidad and Tobago has recently concluded an Extradition Treaty with the Kingdom of the Netherlands. We are presently looking into establishing other extradition treaties with Colombia, Mexico, Costa Rica and Argentina.

Consideration is now being given to establishing extradition treaties with Colombia.

QUERY:

Sub-paragraph 3(d):

- The CTC would welcome a report, in relation to the relevant international conventions and protocols relating to terrorism, on the progress made by Trinidad and Tobago in:

  becoming a party to the instruments to which it is not yet a party; and

enacting legislation, and making other necessary arrangements, to implement the instruments to which it has become a party.

RESPONSE:

REPORT ON INTERNATIONAL CONVENTIONS

The Anti-Terrorism Bill will fulfill Trinidad and Tobago's legislative obligations with respect to the relevant international conventions and protocols relating to terrorism. The Bill will be laid in Parliament at a future date.

The United Nations has identified twelve (12)International Conventions on Terrorism, which all States are being urged to sign and ratify. Trinidad and Tobago is a party to all of these conventions with the exception of the 1999 International Convention for the Suppression of the Financing of Terrorism. Accession by Trinidad and Tobago to the 1999 International Convention for the Suppression of the Financing of Terrorism is currently under review. As indicated in the reply given with respect to the implementation of Security Council Resolution 1373 of September 28, 2001, as soon as the relevant legislation is in place via the Anti-Terrorism Bill which seeks to provide the necessary measures to prevent and suppress terrorist acts, the 1999 Convention for the Suppression of the Financing of Terrorism will be signed and ratified.

Trinidad and Tobago is a party to the following Conventions:

i. International Convention against the Taking of Hostages acceded to 1st April 1981;

ii. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic agents acceded to on 15th June, 1979;

iii. International Convention for the Suppression of Terrorist Bombings, acceded to on 2nd April, 2001;

iv The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation concluded at Rome on 10th March, 1988 and acceded to on 27 July 1989;

v. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome 10th March, 1988 and acceded to on 27 July 1989;

vi. Convention on the Physical Protection of Nuclear Materials signed at Vienna on 3rd March, 1980, acceded 25th April, 2001;

vii. Convention on the Marking of Plastics Explosives for the purpose of Detection, acceded 19th March, 2001;

viii. Convention on Offences and Certain Other Acts Committee on Board Aircraft, signed at Tokyo on 14th September, 1963; ratified 9th February, 1972;

ix. Convention for the Suppression of Unlawful Acts against the safety of Civil Aviation, signed at Montreal on 23rd September 1971, ratified 9th February, 1972;

x. Convention for the Suppression for the Unlawful Seizure of Aircraft, signed at the Hague on 16th December, 1970, ratified 31st January, 1972;

xi. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving international Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, signed at Montreal on 24th February, 1988, ratified 3rd April, 2001.

In respect of those instruments, which require domestic legislation to give effect to international obligations arising under the respective conventions, the Chief Parliamentary Counsel has been given instructions to draft legislation as required.

QUERY:

Sub-paragraph 3 (e)

- Have the offences set forth in the relevant international conventions and protocols relating to terrorism been included as extraditable offences in the bilateral treaties to which Trinidad and Tobago is party?

RESPONSE:

INCLUSION OF OFFENCES FROM RELEVANT CONVENTIONS AS EXTRADITABLE OFFENCES

Once legislation has been passed making terrorism an extraditable offence in Trinidad and Tobago, all relevant international conventions and protocols will be included as extraditable offences in the bilateral treaties to which Trinidad and Tobago is party. The Anti-Terrorism Bill has been drafted and will be laid in Parliament shortly..

QUERY:

Sub-paragraph 3 (f):

Please provide:

- a copy, or an internet reference for, the proposed Refugee Status Bill; and
- a progress report on its enactment and implementation.

RESPONSE:

Trinidad and Tobago is unable at this time to provide a copy of, or Internet reference for the proposed Status of Refugees Bill because the Bill is still at the drafting stage. It is expected that the process will be completed by the end of December 2002. The resulting Act will then require presidential assent in order to have effect.

QUERY:

Sub-paragraph 3 (g)

- The CTC would welcome a progress report on the enactment of the proposed amendment of the Extradition Act designed to prevent claims of political motivation from being recognized as grounds for refusing a request for the extradition of an alleged terrorist.

RESPONSE:

PROPOSED AMENDMENT OF EXTRADITION ACT

Trinidad and Tobago has not been able to amend the Extradition Act, to allow for the prevention of political motivation, being recognized as grounds for refusing a request for the extradition of an alleged terrorist, due to the fact that Parliament has not met. Consequently, the Bill could not have been laid in Parliament. It is anticipated that this will done as soon as Parliament can be convened.

QUERY:

Paragraph 4

- Has Trinidad and Tobago addressed any of the concerns expressed in paragraph 4 of the Resolution?

RESPONSE:

CONNECTION BETWEEN INTERNATIONAL TERRORISM AND TRANSNATIONAL ORGANIZED CRIME

The concerns expressed in paragraph 4 of the Resolution are being addressed by Trinidad and Tobago, which has ratified the Untied Nations Convention Against Transnational Organized Crime. Trinidad and Tobago's Transnational Crime Bill will be placed on the Order Paper of the House of Representatives when Parliament is convened. Trinidad and Tobago is also taking steps towards signing the Protocol Against the Illicit Manufacturing and Trafficking in Firearms, their parts and Components and Ammunition.

QUERY:

Other matters

- Could Trinidad and Tobago please provide an organizational chart of its administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, established to give practical effect to the laws.

regulations and other documents that are seen as contributing to compliance with the Resolution.

RESPONSE:

There is not one organizational chart which would provide the information requested. Coordination with respect to compliance is normally undertaken through the relevant Inter-Ministerial Bodies or Inter-Agency Contacts or Committees.

United Nations S/2002/1192

Security Council

Distr.: General
24 October 2002

Original: English

Letter dated 24 October 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 22 July 2002 (S/2002/810).

The Counter-Terrorism Committee has received the attached supplementary report from Chile submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its attachment to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

[Original: Spanish]

Letter dated 24 September 2002 from the Permanent Representative of Chile to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

I have the honour to transmit to you herewith Chile's response to the Counter-Terrorism Committee's supplementary questionnaire on the report submitted by Chile pursuant to Security Council resolution 1373 (2001) (see appendix).

I should be grateful if you would have this response distributed as a document of the Security Council.

(*Signed*) Juan Gabriel **Valdés**
Ambassador
Permanent Representative of Chile to the United Nations

Appendix

Response of the Government of Chile to the Counter-Terrorism Committee's supplementary questionnaire on the report submitted by Chile pursuant to resolution 1373 (2001)*

I. Introduction

1. In accordance with paragraph 6 of Security Council resolution 1373 (2001), Chile responded on 27 December 2001 to the questionnaire prepared by the Counter-Terrorism Committee established pursuant to that resolution.

2. In considering the report submitted by Chile, the Committee, with the assistance of its panel of experts, formulated a number of preliminary comments/questions on the report, concerning which it requested supplementary information.

3. The present report, which follows the order of the relevant paragraphs and subparagraphs of resolution 1373 (2001), responds to those comments and questions as follows:

II. Specific responses

4. Subparagraph 1 (a)

Could Chile please outline the relevant provisions amending the law on illicit traffic in narcotics and psychotropic substances that provide for the establishment of a Financial Analysis and Intelligence Unit?

On 12 July 2002, the executive branch introduced in the Chamber of Deputies a bill establishing a Financial Analysis and Intelligence Unit.

This draft legislation was detached from title IV of the bill amending the Act on the illicit traffic in narcotic drugs and psychotropic substances, which had been submitted to the National Congress in 1999. It was thought preferable to submit the proposed legislation in a separate bill in order to speed up its passage, since it enjoys broad parliamentary support.

To this end, a new bill establishing the Financial Analysis and Intelligence Unit was introduced and is now before the Chamber of Deputies in the first phase of the legislative approval process stipulated by the Constitution. The bill has already been approved by the Chamber's Constitutional and Finance Committees and must now be voted on by the full chamber before being taken up in the Senate. For the information of the Committee, the text of the bill, as approved by the Finance Committee of the Chamber of Deputies in the first phase of the legislative adoption process, is attached to this report as annex 1.

The main object of the Unit will be to prevent the use of the financial system and other sectors of economic activity for the commission of the crime of money-laundering or laundering of the proceeds of the crimes described in article 19 (a) of the bill, which include terrorism in any of its forms.

* The enclosures are on file with the Secretariat and are available for consideration.

Please outline the legislative provisions and procedures in Chile for the monitoring of suspicious financial transactions. Are there any legal reporting obligations for financial institutions and other intermediaries (such as lawyers, notaries) that contribute to the prevention of economic and financial operations with terrorist or other criminal aims? What penalties apply to non-compliance with the legal obligations?

What legislative provisions and procedures are currently in place to monitor suspicious financial transactions?

The concept of a suspicious financial operation or transaction does not exist in the current law (Act No. 19.366), although it is introduced in the bill establishing the Financial Analysis and Intelligence Unit. Nevertheless, the State Defence Council, in accordance with the provisions of its own Organic Act and the special provisions of Act No. 19.366 on the illicit traffic in narcotic drugs and psychotropic substances which is currently in force, is responsible for: (a) conducting preliminary administrative investigations into the crime of money-laundering (article 14 of Act No. 19.366); and (b) instituting criminal proceedings in cases of money-laundering (article 13 of Act No. 19.366).

The Superintendency of Banks and Financial Institutions, acting within its legal authority, has also issued instructions to banks and financial institutions concerning steps aimed at preventing money-laundering. These include the introduction of certain policies and procedures, the appointment of an official with responsibility for oversight and the establishment of rules for reporting suspicious cases.

The Superintendency has broad powers to promote and enforce compliance with laws and regulations. These legal provisions are fully applicable to the crimes of money-laundering and financing of terrorism, and the penalties imposed range from various levels of warning and fines to revocation of authorization to operate (licence), without prejudice to any criminal penalties that the courts may apply, where appropriate.

Consideration is currently being given to changes in the law that might be necessary with respect to the freezing of accounts and assets in banks and financial institutions. Another important measure is the establishment of legal and/or administrative rules under which banks and financial entities would be required to adopt certain security measures (such as monitoring, follow-up and reporting of suspicious banking or financial operations; complete and rigorous identification of holders of bank accounts, especially in the case of legal entities; and preservation of documents and background information on banking transactions).

Are there any legal reporting obligations for financial institutions and other intermediaries (such as lawyers and notaries) that contribute to the prevention of economic and financial operations with terrorist or other criminal aims?

No. The reporting obligation is established in the bill setting up the Financial Analysis and Intelligence Unit, which is currently before the legislature.

What penalties apply to non-compliance with the legal obligations?

Since there is no reporting obligation, there are no penalties. Article 3 of the bill establishing the Financial Analysis and Intelligence Unit requires financial institutions and other agents to report to the Unit any suspicious or unusual acts or

transactions and imposes a penalty for non-compliance of 61 days' to three years' imprisonment and a fine of 40 to 100 monthly tax units (US$ 1,500 to US$ 3,850). This reporting obligation will apply to banks, foreign exchange houses, stock exchanges and stockbrokers, notaries, casinos and gaming houses, among others.

Please describe the recommendations that are to be implemented by banks and financial institutions, as referred to in the report.

The Superintendency of Banks and Financial Institutions has published chapters 1 to 14 of the updated compilation of norms which provides guidance on the provisions that banks will have to apply in preventing money-laundering. These provisions, which originally referred to the laundering of the proceeds of drug trafficking, were extended by circular No. 3150 of October 2001 to activities related to the financing of terrorist acts. The text of the circular is attached as annex 2 to this report.

In addition, pending the adoption of the bill establishing the Financial Analysis and Intelligence Unit, the Association of Banks and Financial Institutions, a trade group that includes nearly all the country's banks and financial institutions, has produced an instruction manual containing the same recommendations which is now in use.

5. **Subparagraph 1 (b)**

Please provide a progress report and an outline of the draft law incorporating into national law a special offence in order to criminalize the wilful provision or collection of funds to finance terrorism.

The bill criminalizing the wilful provision or collection of funds to finance terrorism is ready for submission to the legislature. It also incorporates the recommendations contained in Security Council resolution 1373 (2001).

The bill is in the form of an amendment to Act No. 18.314. It typifies and establishes penalties for terrorist conducts, punishing anyone who collects or provides by any means, directly or indirectly, funds for use in the commission of crimes characterized as terrorist acts.

6. **Subparagraph 1 (c)**

Please elaborate on the legislative reform currently being considered with respect to the freezing of accounts and other assets in banks and financial institutions, as referred to in the report.

With the promulgation of Act No. 19.806, amending the Code of Penal Procedure, the power of the State Defence Council in cases involving money-laundering to request, inter alia, the freezing of all kinds of deposits held in accounts has been transferred to the Public Prosecutor's Office, which, under the amended Code of Penal Procedure now in force in the country, is the government body responsible for the criminal prosecution of crimes.

The amended Code of Penal Procedure is being brought into force gradually, region by region, with the result that the State Defence Council retains this power in regions where the amended Code has yet to enter into force.

7. **Subparagraph 1 (d)**

What preventive and surveillance measures are available to ensure that funds and other economic resources intended for religious, charitable and cultural purposes are not diverted from their stated purposes?

Please explain whether any law governs alternative money transfer agencies.

There are two levels of controls to ensure that funds intended for non-profit purposes are not diverted to illicit purposes or ends.

The first level is preventive and takes place prior to the establishment of a non-profit entity, during the processing of the entity's application for legal personality. It is carried out, in coordination with the Ministry of Justice, by the regional administration or provincial government where the entity is domiciled, and the institutions concerned rely for these purposes on the Policía de Investigaciones. The control takes the form of an evaluation of the economic capacity of the entity in relation to the aims and purposes declared by it in its statutes (article 22 of Supreme Decree No. 110 of 1979).

There is a second form of control at this preventive level, consisting of a criminal background check on the members of the board of directors of the entity that is being established. Under article 8 of Supreme Decree No. 110, no one who has been the subject of any criminal proceeding at any time during the 15 years preceding the date of the application for legal personality may be a member of the board of directors. This background check is carried out directly by the Ministry of Justice on the basis of information provided by the Civil Registry and Identification Service. The purpose of this control is to ensure that the individuals who run this kind of entity meet the necessary ethical standards.

A second level of control (a posteriori) is exercised once the entity has come into existence. This control is ongoing and involves the entity's obligation to submit its complete accounting report and balance sheet each year to the Ministry of Justice. This means that the Ministry is able to monitor the entity's economic activity and may demand, among other things, clarifications and supplementary reports (article 34 of Supreme Decree No. 110, in conformity with Decree-Law No. 1183 of 1975 as amended by Decree-Law No. 1382 of 1976, of the Ministry of Finance).

In any case, and without prejudice to the foregoing, it should be mentioned that overall monitoring and surveillance of economic activities is carried out by the Internal Taxation Service, the agency responsible for tax collection in our country. As part of its functions, the Service closely monitors on an ongoing basis the economic and accounting activity of anyone who works or runs a business (whether an individual or a legal entity operating for profit).

8. **Subparagraph 2 (a)**

Please explain whether the current legal provisions relating to recruitment to terrorist groups are applicable to recruitment in Chile to terrorist groups outside Chile.

Recruitment in Chile for terrorist activities is punishable as unlawful terrorist association under the provisions of article 2 (5) of Act No. 18.314 relating to articles 292 et seq. of the Penal Code, which characterize the crime of ordinary unlawful

association. Indeed, such recruitment, by its very nature, presupposes the existence of unlawful association.

In this case, and without prejudice to any responsibility that may apply if a terrorist crime results (as stipulated in article 294 bis of the Penal Code), the penalty is short-term imprisonment (medium degree), on the understanding that the unlawful association was formed for the commission of crimes (article 294 of the Penal Code), increased in both cases by one degree (article 3 of Act No. 18.314). Consequently, the penalty is a term of imprisonment ranging from three years and one day to five years. Now, all this is on the understanding that the funder does not control or encourage the unlawful terrorist association, otherwise the penalties applicable to him are those stipulated in article 293 of the Penal Code, increased by two degrees. In essence, this means simple life imprisonment to qualified life imprisonment (life imprisonment with the possibility of parole after 20 years to life imprisonment with the possibility of parole after 40 years).

Without prejudice to the foregoing, the act referred to in this response may also be punished, in a situation where it clearly coincides with the crime of unlawful terrorist association (in which case only one of the two crimes may apply), as the crime typified in article 8 of Act No. 17.798 on Arms Control. We are referring to the crime of unlawful association as defined in the Arms Control Act, which punishes, inter alia, those who organize, finance or equip, or those who instruct, incite or induce others to create and operate, private militias, combat groups or militarily organized parties armed with explosives or firearms.

In such cases, the penalty is a term of imprisonment ranging from five years and one day to 20 years. If participation is limited to "helping" create and operate such armed groups, the prison term is three years and one day to five years. Conversely, if the offences defined in the preceding paragraphs are committed by members of the armed forces or the police and security forces, whether on active service or retired, the penalty is a prison term ranging from 10 years and one day to simple life imprisonment.

Please outline article 2 of the law on arms control. What legal provisions or procedures are applicable to the acquisition of weapons?

Outline of article 2 of the Arms Control Act

Article 2 of Act No. 17.798 on Arms Control lists the weapons, explosives and military materiel in general whose acquisition, possession and bearing are subject to the controls established by the Act.

Those controls are carried out by the Ministry of Defence through the Directorate of National Mobilization. In addition, for control purposes, the armed forces garrison commands, the authorities of the *Carabineros*, the arms and explosives testing agency and the armed forces specialized services act as executing, financial monitoring or advisory authorities.

Article 2 stipulates that the following weapons, materiel and objects shall be subject to the aforementioned controls:

(a) Military materiel, meaning weapons of any kind manufactured for use in wartime by the armed forces, and means of land, sea and air combat, manufactured or specially adapted for this purpose;

(b) Firearms of all calibres and their parts and components;

(c) Ammunition and cartridges;

(d) Explosives, bombs and other similar devices and their parts and components;

(e) Chemicals which could be used to manufacture explosives or which serve as a basis for the production of ammunition, projectiles, missiles or rockets, bombs, cartridges and tear-producing or biological weapons;

(f) Facilities intended for the manufacture, assembly, stockpiling or storage of such elements; and

(g) Fireworks, pyrotechnic articles and other similar devices and their parts and components.

Legal provisions or procedures applicable to the acquisition of weapons

This aspect is regulated by Act No. 17.798 on Arms Control and its implementing regulations (Decree No. 77 of the Ministry of Defence of 1982).

First of all, article 3 of the Act imposes an objective limit by prohibiting the sale, possession, bearing and use of specific weapons and materiel (this restriction is waived for the armed forces and the police).

The weapons subject to this prohibition are as follows: sawn-off shotguns; short arms of any calibre that are totally automatic; camouflaged weapons (that is, weapons disguised to appear harmless); machine guns; submachine guns; and any other automatic or semi-automatic weapon that is highly destructive or effective, whether because of its power, the calibre of its projectiles or its targeting mechanisms. The prohibition also includes devices manufactured on the basis of asphyxiating, paralysing or poisonous gases, corrosive substances or metals that splinter when the gases expand, and devices for launching or activating them. Lastly, there is a provision that in no case may anyone possess or hold chemical, biological or nuclear weapons (designated "special weapons").

Before moving on to the acquisition of weapons, it should be mentioned that there are rigorous controls and restrictions on the manufacture, assembly, import and export of weapons and objects listed in article 2 (authorization by the Directorate of National Mobilization, with strict requirements and conditions, etc.).

Control of the acquisition of weapons and explosives is based essentially on two mechanisms:

(i) A strict system of authorizations for the acquisition, possession, sale, transfer, bearing, etc. of arms;

(ii) A strict system of registration for persons so authorized.

(i) Authorization system (article 4 of Act No. 17.798):

(a) Authorization — competent authority — admissibility

The Act establishes that no individual or legal entity may possess or hold the weapons and objects listed in article 2 (a), (b), (c), (d) and (e) or transport, store, distribute or conclude agreements or contracts (in other words, sell, purchase, transfer, acquire, give or receive on hire, loan or deposit, etc.) relating to such

weapons and objects without authorization from the Directorate of National Mobilization. On an exceptional basis, authorization for weapons other than those listed in article 2 (a) may be granted by other public authorities such as the armed forces garrison commands or the senior authorities of the *Carabineros*.

The Act establishes that the authorities may permit registration of a weapon only when, in their judgement, it can be assumed from the background of its owner or holder that he will comply with the restrictions on the possession and holding of weapons established by the Act (having a fixed abode, etc.). To that end, they may demand such background information as they deem necessary to determine the applicant's suitability and the nature and purpose of the operation involved. The authorities can always deny, suspend or attach conditions to authorization (article 37 of the regulations). In short, the authorities' power is completely discretionary and they may revoke the authorization or registration at any time.

(b) Scope of the authorization

Authorization or registration allows the owner or holder of a weapon to keep it only at his declared residence, place of work or place that he is seeking to protect.

Moreover, it should be mentioned that no authorizations or permits can be granted or registrations accepted for more than two firearms per person (except in highly exceptional cases provided for in the Act itself: collectors, hunters or authorized dealers).

The rights protected by authorizations are non-transferable and inalienable (article 5 of the regulations). Likewise, authorizations lapse in the event of failure to comply with any of the obligations that they entail (article 6 of the regulations).

(c) Procedure

Authorization always takes effect through registration in the name of the person authorized to possess or hold the weapon (article 5 of Act No. 17,798).

Purchasers or future holders must always request authorization for the purchase or acquisition, which is given in the form of a purchase order that expires 10 working days after its date of issue.

Applications to transfer an authorized firearm and its ammunition must be accompanied by the registration document and state the reason for the sale or change of owner. Once it has studied the background of the person acquiring the firearm, the authority may grant or refuse authorization for the transfer. The following documents are required for that purpose:

- Registration document for the weapon;
- Transfer application, signed by both parties.

If the owner of registered weapons dies, a new registration in the name of the person inheriting them must be requested (article 38 of the regulations).

(d) Bearing of weapons

A similar control system and procedure apply with respect to authorization to bear weapons. In this case, the authorization is valid for a maximum of one year and only the permit holder is authorized to carry a weapon.

(ii) Registration system (article 5 of Act No. 17.798):

The Act provides that all (authorized) firearms must be registered, in the name of the owner and holder (or bearer), with the same authorities as indicated above.

It also provides that the Directorate of Recruitment and Mobilization must keep a national register of arms registrations (National Arms Register).

9. Subparagraph 2 (d)

Please explain whether the general rules of the Penal Code which prevent and punish terrorist acts apply also to persons and entities that use the territory of Chile to plan or commit terrorist acts outside the territory of Chile.

To the extent that the activities of individuals or gangs that organize international terrorism constitute per se unlawful association or other punishable acts, they can be prevented and punished.

Besides, there is always the possibility of passive extradition if the crime is the subject of a criminal prosecution abroad. For instance, if it is considered admissible for Chile to extradite the perpetrators, precautionary measures such as restriction orders, arrest and pre-trial detention can be adopted to make it easier to hand them over subsequently to the requesting country.

What is the competence of the courts of Chile to deal with criminal acts of each of the following kinds:

- **an act committed outside Chile by a person who is a citizen of, or habitually resident in, Chile (whether that person is currently present in Chile or not);**
- **an act committed outside Chile by a foreign national who is currently in Chile?**

In this connection, attention is drawn to the extraterritoriality provisions contained in our laws.

By virtue of those provisions, the following crimes and offences committed outside the territory of the Republic by Chileans or naturalized citizens are subject to Chilean jurisdiction:

1. Acts committed by a diplomatic or consular agent of the Republic in the performance of his duties (article 6 (1) of the Courts Organic Code);

2. In general, a series of offences of corruption (bribery, embezzlement, etc.) committed by Chilean public officials or even by foreigners in the service of the Republic (article 6 (2) of the Courts Organic Code);

3. Acts against the sovereignty or external security of the State committed by Chileans or naturalized citizens (article 6 (3) of the Code);

4. Acts committed by Chileans against Chileans, if the perpetrator returns to Chile without having been tried by the authorities of the country in which the crime was committed (article 6 (6) of the Code).

In addition to the cases listed above, the following crimes and offences committed outside the territory of the Republic are subject to Chilean jurisdiction,

regardless of the nationality or country of habitual residence of the perpetrators or accomplices and regardless of the State in which they happen to be:

1. Drug trafficking and crimes against public health when they endanger the health of Chile's inhabitants (article 6 (3) of the Code and article 55 of Act No. 19.366);

2. Crimes committed on board a Chilean ship on the high seas or on board a Chilean warship in the waters of another State (article 6 (4) of the Code);

3. Piracy (article 6 (7) of the Code);

4. Crimes provided for in treaties concluded with other States (articles 6 (8) of the Code).

All of the foregoing is without prejudice to any dispute over jurisdiction that may arise when other States also claim jurisdiction.

10. Subparagraph 2 (e)

According to the report, "consideration is being given to amending provisions concerning terrorist acts, terrorist organizations, persons that support and finance terrorist organizations, and other aspects of the struggle against terrorism, particularly criminal laws, criminal procedure laws and laws on finance". Please provide a progress report on any steps taken in this regard.

Please see response under subparagraph 2 (a) in this report.

11. Subparagraph 2 (f)

What is the legal time frame within which a request for judicial assistance in criminal investigations or criminal proceedings (especially those relating to the financing or support of terrorist acts) must be met and how long, on average, does it actually take in practice to implement such a request in Chile?

There is no specific legal time frame. Generally speaking, it will very much depend on the type of cooperation requested and the nature of the proceedings to which the request relates. It tends to take between five and seven months to meet the request. However, once the Amended Code of Penal Procedure is in force throughout Chile (by the end of 2004), these time frames should get shorter because of the functions to be assumed by the Public Prosecutor's Office with regard to criminal investigations.

12. Subparagraph 2 (g)

Please describe the mechanism for inter-agency coordination between the authorities responsible for narcotics control, financial tracking and security, in particular in regard to border control preventing the movements of terrorists.

With respect to narcotics control, the institutional framework in place provides for the convening of a National Drug Council, presided over by the Minister of the Interior and bringing together the authorities of the services involved in combating drug trafficking, to review public policy in this area. This is in keeping with the national strategy against drug use and trafficking.

It also provides for periodic meetings of a Control Committee presided over by the Assistant Secretary of the Interior and comprising the directors of the services dealing with narcotics control, among them the *Carabineros*, the *Policía de Investigaciones*, the Customs Service, the Coastguard Service, the Directorate of Public Security and Information and the Public Health Institute. Concomitantly, the various joint border committees established with Argentina, Peru and Bolivia meet regularly to study ways of improving the established control mechanisms for combating drug trafficking.

Operationally, the various drug control bodies meet often to coordinate investigations leading to the criminal prosecution of persons and organizations involved in drug trafficking. They are also active members of networks for the exchange of information with their counterparts in other countries, such as the International Criminal Police Organization (Interpol) and the Regional Intelligence Liaison Offices (RILOS) of the World Customs Organization.

Concerning financial tracking and security, banks and financial institutions are not required by law to provide information about suspicious operations, but the bill establishing the Financial Intelligence Unit does contain provisions to this effect, as indicated earlier. Likewise, although Chile has ratified the International Convention for the Suppression of the Financing of Terrorism, its domestic legislation has not yet been brought into line with the Convention. Chile is nevertheless a member of the Financial Action Task Force for South America (GAFISUR) and is in fact currently presiding over that subregional body, which in December 2001 adopted the eight special recommendations on the financing of terrorism previously agreed by the Financial Action Task Force (FATF).

The competent Chilean bodies have publicized, distributed and investigated the lists sent to the Chilean Government under the Security Council resolutions identifying persons and organizations linked to international terrorism.

Although there is no specific legislation permitting the freezing of bank accounts or assets by administrative decree, requests from abroad for the freezing of assets can be processed if they are made in the context of a trial being heard by a foreign court and are formalized through the corresponding letter rogatory. The authority which must rule on the admissibility of the letter of rogatory is the Supreme Court of Justice; if it is ruled admissible, it must be complied with by the competent judge.

Nevertheless, the important thing in the preventive phase is the establishment of an intelligence and cooperation network that will make it possible to identify or recognize assets derived from or intended to finance the commission of terrorist acts. The main role here will be played by the future National Intelligence Agency that will succeed the present Directorate of Public Security and Investigation.[1] The National Intelligence Agency will play a preventive role when an intelligence network for the prevention of terrorist acts is established.

Another step has been the creation of the Financial Analysis and Intelligence Unit, whose task it will be to prevent the use of the financial system and other sectors of economic activity for the commission of any of the crimes specified. It is envisaged that the Unit's functions will include investigation of the financing of

[1] It should be pointed out that the Government has sent to Parliament for adoption the bill establishing the National Intelligence Agency.

terrorist activities and that the measures contemplated for combating drug trafficking will be extended to cover financial operations that may be carried out to finance activities of a terrorist nature.

To prevent persons linked or related to terrorism from entering the country, training was provided to the staff of Chile's National Central Bureau of Interpol, which has an officer from the *Policía de Investigaciones* permanently assigned to the Interpol General Secretariat in Lyon, France, and two officers assigned to the Interpol American Subregional Bureau in Buenos Aires, Argentina. Ongoing administrative and technical contact is maintained with counterparts around the world, making timely use of the mechanisms for secure and rapid exchange of relevant information and background data and relaying all instructions on international terrorists to the border controls that come under the institution's responsibility. As an early-warning mechanism, this system has proved very useful in neutralizing terrorism.

From the standpoint of national security, the police forces coordinate regularly, both administratively and through the technical channel, with the Directorate of Public Security and Information, making it possible to anticipate and act promptly to deal with any incident in the country that is of a terrorist nature.

With regard to the exchange of intelligence information, permanent contact is maintained with counterparts in various countries, making it possible to obtain additional background data on the terrorist groups that operate internationally and allowing a fuller and smoother exchange of operational information.

In the area of bioterrorism, there is coordination with the competent agencies in handling unknown substances and work is already being done on investigating the origin of suspicious letters.

Our immigration legislation, contained in Decree-Law No. 1094 of 1975 and Supreme Decree No. 597 of 1984, provides that aliens linked to the commission of terrorist acts may be denied entry to the country or expelled from it and have their residence permits denied or revoked.

The respective police authorities act as the channels for receiving or obtaining information on such terrorist links with a view to deciding or decreeing any of the immigration measures mentioned. The police report all criminal offences or conducts that come to their attention in the exercise of their duties or when requested by the immigration authorities. Such police reports cover not only acts committed within the country but also all the information compiled through Interpol and coming from different countries around the world.

Lastly, the Southern Common Market (MERCOSUR), Bolivia and Chile have agreed to exchange information on visa denials, expulsions and wanted persons in the member countries. Such coordination furnishes the region's immigration authorities with more information for deciding on applications for residence permits filed in their respective countries.

Questions of asylum and refugee status in Chile are governed by the Convention relating to the Status of Refugees, the Protocol relating to the Status of Refugees and the Aliens Act No. 19.476 and its implementing regulations.

The grounds for rejecting applicants for asylum or refugee status are those set out in article 1 (c), (d), (e) and (f) of the Convention relating to the Status of Refugees.

The Aliens Act No. 19.476 established the Commission on the Granting of Refugee Status, whose mandate is to advise the authority responsible for ruling on applications. It has the power to request and obtain whatever background information it considers relevant to facilitate the authority's decision, which may include information on applicants' police and judicial records, sought through Interpol, and information from Chile's consular missions in other countries. The information thus obtained is supplemented by the reports issued by the Office of the United Nations High Commissioner for Refugees (UNHCR).

Lastly, it is necessary to bear in mind that, as with any application for a residence permit filed by an alien, the grounds for rejection and revocation provided for in our immigration laws also apply to refugee status and measures may be taken to expel a refugee or prohibit his entry to the country based on adverse information that justifies such action.

Following the 11 September 2001 attacks in the United States, a consultative mechanism was set up between the Directorate of Consular Affairs and Immigration of the Ministry of Foreign Affairs and the Directorate of Public Security and Information to permit more exhaustive scrutiny of visa applications from persons wishing to enter the country.

13. **Subparagraphs 3 (a) and (b):**

Please describe the existing measures and procedures for the exchange of operational information and for cooperation on administrative and judicial matters with countries other than those mentioned in the report.

The Chilean *Carabineros* and *Policía de Investigaciones* regularly revise their information-gathering plans, keeping a constant eye on groups or persons suspected of links to terrorist activities and conducting intelligence analyses on the basis of available background information. Their tactical and strategic units have been reinforced through the establishment of ongoing communication and coordination, both administratively and through a technical channel of direct communication, with Interpol and the intelligence, narcotics control and aliens services. This has made it possible to monitor aliens suspected of terrorist links or involvement in unlawful acts.

As a way of exchanging experience in the area of international terrorism, police intelligence officers have taken part in seminars held in Uruguay and Brazil to coordinate the anti-terrorism strategies applied in each country, so as to gain an overall picture that will make it possible to standardize investigation policies and the timely exchange of information.

With regard to the detection of forged or falsified travel documents, the *Policía de Investigaciones*, which is responsible for border controls of persons, has increasingly been sending its officers on international training courses to learn how to detect such forgeries or falsifications.

Internally, the Civil Registry and Identification Service, which issues passports and identity cards, has developed a new identification system. The new documents

have advanced security features, are valid for a longer period of time and are designed to international requirements and standards. Under the new system, all the graphic data on an identity card or passport — the photograph, the signature and the fingerprint — are digitalized. This system permits the automated verification of peoples' identity using Automated Fingerprint Identification Systems (AFIS) technology and the blocking of identity cards and passports, thereby reducing the risks entailed by their loss or theft.

Once a central computerized identification system is set up, an identification database for all Chileans and resident aliens will be available.

The new documents meet International Civil Aviation Organization (ICAO) standards for travel documents. Both incorporate modern security features to protect against falsification and forgery.

Security has been considerably tightened in border controls of persons and luggage. For example, investments in modern luggage scanning systems have made it possible to detect the presence of arms, explosives and hazardous materials.

As for controlling weapons that might be used by terrorist groups, Chile, as indicated earlier, has strict arms control legislation that expressly prohibits private individuals from bearing or owning a range of highly destructive weapons, such as sawn-off shotguns, machine guns, sub-machine guns or devices containing gases or corrosive substances. This prohibition is waived for the armed forces, the *Carabineros*, the *Policia de Investigaciones* and the Directorate of Civil Aviation, but only in respect of the number of weapons authorized by the Ministry of National Defence at the proposal of the service concerned.

The Ministry of National Defence, the armed forces garrison commanders and the *Carabineros* are responsible for the strict, rigorous control and registration of authorized weapons. In any case, without special authorization no one may register more than two firearms in his own name.

Operational information is exchanged primarily with the countries of the region, namely, the MERCOSUR countries and associated countries and Peru, as described under subparagraph 3 (b) of Chile's initial report.

14. Subparagraph 3 (c):

Please provide a list of countries with which Chile has concluded bilateral treaties relating to terrorism.

Chile has not signed any bilateral treaties relating specifically to terrorism. It is, however, a party to two bilateral treaties that have an indirect bearing on terrorism, namely:

- Agreement with Italy on cooperation in combating terrorism, organized crime and drug trafficking, signed at Rome on 16 October 1992 and published in the *Official Gazette* of 22 February 1996;
- Agreement with Israel on cooperation in combating illicit drug trafficking and crime, adopted at Jerusalem on 23 March 1993 and published in the *Official Gazette* of 3 May 1995.

15. **Subparagraph 3 (d):**

The CTC would welcome a report, in relation to the relevant international conventions and protocols relating to terrorism, on the progress made by Chile in becoming a party to the instruments to which it is not yet a party and in enacting legislation, and making other necessary arrangements, to implement the instruments to which it has become a party.

As indicated in the report submitted to the Committee in 2001, Chile is a party to all the existing international multilateral conventions and protocols adopted universally or within the framework of the United Nations, including the International Convention for the Suppression of the Financing of Terrorism of 1999.

In addition, the Organization of American States (OAS) completed the Inter-American Convention against Terrorism, in 2002, and adopted it at its most recent General Assembly. Chile signed the Convention on 3 June 2002 and will be sending it shortly to the National Congress for adoption and subsequent ratification.

Please indicate the legislation and other measures adopted to implement the international conventions and other protocols on terrorism to which Chile is a party.

The aforesaid conventions are fully applicable in Chile. Most of the crimes described in them are covered by Chilean law, which punishes terrorist activities. Chile will be conducting a specific study to determine which conducts among those described in the conventions have not yet been criminalized, with a view to drafting and adopting legislation to that end. As indicated under section 5 of this report, the bill criminalizing the wilful provision or collection of funds for terrorism will be submitted to the legislature shortly.

16. **Paragraph 3 (e):**

Have the offences set forth in the relevant international conventions and protocols on terrorism been included as extraditable offences in the bilateral extradition treaties to which Chile is a party?

The offences set forth in the relevant multilateral conventions are deemed to be extraditable offences under the bilateral extradition treaties signed by Chile with countries that are also parties to those multilateral conventions.

17. **Subparagraph 3 (g):**

Please describe the procedures and legal provisions that regulate extradition. Has Chile concluded any bilateral treaties on extradition?

Procedures and legal provisions regulating extradition

Second stage proceedings

A chamber of the Supreme Court hears this stage of the proceedings and summons the defendant, the prosecutor and the person responsible for processing the extradition to deliver the case file. The summary of the case and the arguments are then presented.

There is no appeal against the decision of the second stage proceedings.

Bilateral extradition treaties concluded by Chile

Chile has concluded the following bilateral treaties on extradition:

1. **Australia**. Extradition Treaty. Signed at Canberra on 6 October 1993. Promulgated by Supreme Decree of the Ministry of Foreign Affairs No. 1844 of 27 December 1995. Official Gazette: 20 February 1996.

2. **Belgium**. Extradition Convention. Signed at Santiago on 29 May 1899. Promulgated on 13 March 1904. Official Gazette: 5 April 1904.

3. **Bolivia**. Extradition Treaty. Signed at Santiago on 15 December 1910. Promulgated by Decree No. 500 of 8 May 1931. Official Gazette: 26 May 1931.

4. **Brazil**. Extradition Treaty. Signed at Rio de Janeiro on 8 November 1935. Promulgated by Decree No. 1180 of 18 August 1937. Official Gazette: 30 August 1937.

5. **Canada**. The Extradition Treaty signed with the United Kingdom of Great Britain and Northern Ireland is in force between Chile and Canada. Signed at Santiago on 26 January 1897. Promulgated on 14 April 1898. Official Gazette: 22 April 1898.

6. **Colombia**. Extradition Treaty. Signed at Bogota on 16 November 1914. Promulgated by Decree No. 1472 of 18 December 1928. Official Gazette: 7 January 1929.

7. **Republic of Korea**. Extradition Treaty, signed at Seoul on 21 November 1994. Promulgated by Decree No. 1417 of 1 September 1997. Official Gazette: 23 October 1997.

8. **Ecuador**. Extradition Convention. Signed at Quito on 10 November 1897. Promulgated on 27 September 1899. Official Gazette: 9 October 1899.

9. **Spain**. Treaty on Extradition and Judicial Assistance in Criminal Matters. Signed on 14 April 1992. Promulgated by Supreme Decree of the Ministry of Foreign Affairs No. 31 of 10 January 1995. Official Gazette: 11 April 1995.

10. **United States of America**. Treaty for the Extradition of Offenders. Signed at Santiago on 17 April 1900. Official Gazette: 11 August 1902. Supplementary Protocol to the Extradition Treaty. Signed at Santiago on 15 June 1901. Both promulgated on 6 August 1902. Official Gazette: 11 August 1902.

11. **Mexico**. Treaty on Extradition and Mutual Legal Assistance in Criminal Matters. Signed at Mexico City on 2 October 1990. Promulgated by Supreme Decree of the Ministry of Foreign Affairs No. 1011 of 30 August 1993. Official Gazette: 30 November 1993.

12. **Nicaragua**. Treaty on Extradition and Judicial Assistance in Criminal Matters. Signed at Santiago on 28 December 1993. Promulgated by Supreme Decree of the Ministry of Foreign Affairs No. 411 of 8 June 2001. Official Gazette: 20 August 2001.

13. **Paraguay**. Extradition Treaty. Signed at Montevideo on 22 May 1897. Official Gazette: 13 November 1928.

14. **Peru**. Extradition Treaty. Signed at Lima on 5 November 1932. Promulgated by Decree No. 1152 of 11 August 1936. Official Gazette: 27 August 1936.

15. **United Kingdom of Great Britain and Northern Ireland**. Extradition Treaty. Signed at Santiago on 26 January 1897. Promulgated on 14 April 1898. Official Gazette: 22 April 1898.

16. **Uruguay**. Extradition Treaty. Signed at Montevideo on 10 May 1897. Official Gazette: 30 November 1909.

17. **Venezuela**. Extradition Treaty. Signed at Santiago on 2 June 1962. Promulgated by Supreme Decree of the Ministry of Foreign Affairs No. 355 of 10 May 1965. Official Gazette: 1 June 1965.

Is political motivation recognized as a ground for refusing requests for the extradition of alleged terrorists?

Terrorist acts are not considered to be political offences as a ground for refusing requests for extradition.

17. **Paragraph 4**

Has Chile addressed any of the concerns expressed in paragraph 4 of the resolution?

As the Pro Tempore Secretariat of the Rio Group in 2001, Chile had to coordinate the Group's position in various multilateral forums, particularly the United Nations. It also organized a meeting of legal experts from Rio Group countries to discuss issues relating to the prevention and suppression of terrorism, particularly within the framework of Security Council resolution 1373 (2001). This resulted in the drafting of a working paper for the Ministers for Foreign Affairs which, essentially, draws attention to the challenges posed by terrorism to legal structures and States that the fight against terrorism must always respect national and international law and human rights. The paper reproduced information on existing national legislation dealing with terrorism, based on which it was concluded that judicial cooperation and extradition mechanisms among the countries of the Rio Group must be strengthened.

The working paper was submitted to the Ministers for Foreign Affairs of the Rio Group, who expressed profound appreciation for the work done by the legal experts. This was underscored in the statement on international terrorism issued by the Ministers for Foreign Affairs in New York on 14 November 2001, in which they undertook to give full attention to the report and to maintain a system of ongoing consultations so as to adapt the legislation of member countries for the purpose of effectively combating international terrorism.

The recently adopted Inter-American Convention against Terrorism, which Chile has signed, also stipulates measures for cooperation on border and customs controls in order to detect and prevent the international movement of terrorists and trafficking in arms or other materials intended to support terrorist activities. In that context, the parties agree to promote cooperation and the exchange of information to improve controls on the issuance of travel and identity documents and to prevent their counterfeiting, forgery or fraudulent use. They state that law enforcement authorities should work closely with one another to enhance the effectiveness of law enforcement action to combat the offences established in universal international instruments. They also agree to afford one another mutual legal assistance with

respect to the prevention, investigation and prosecution of the offences established in international instruments.

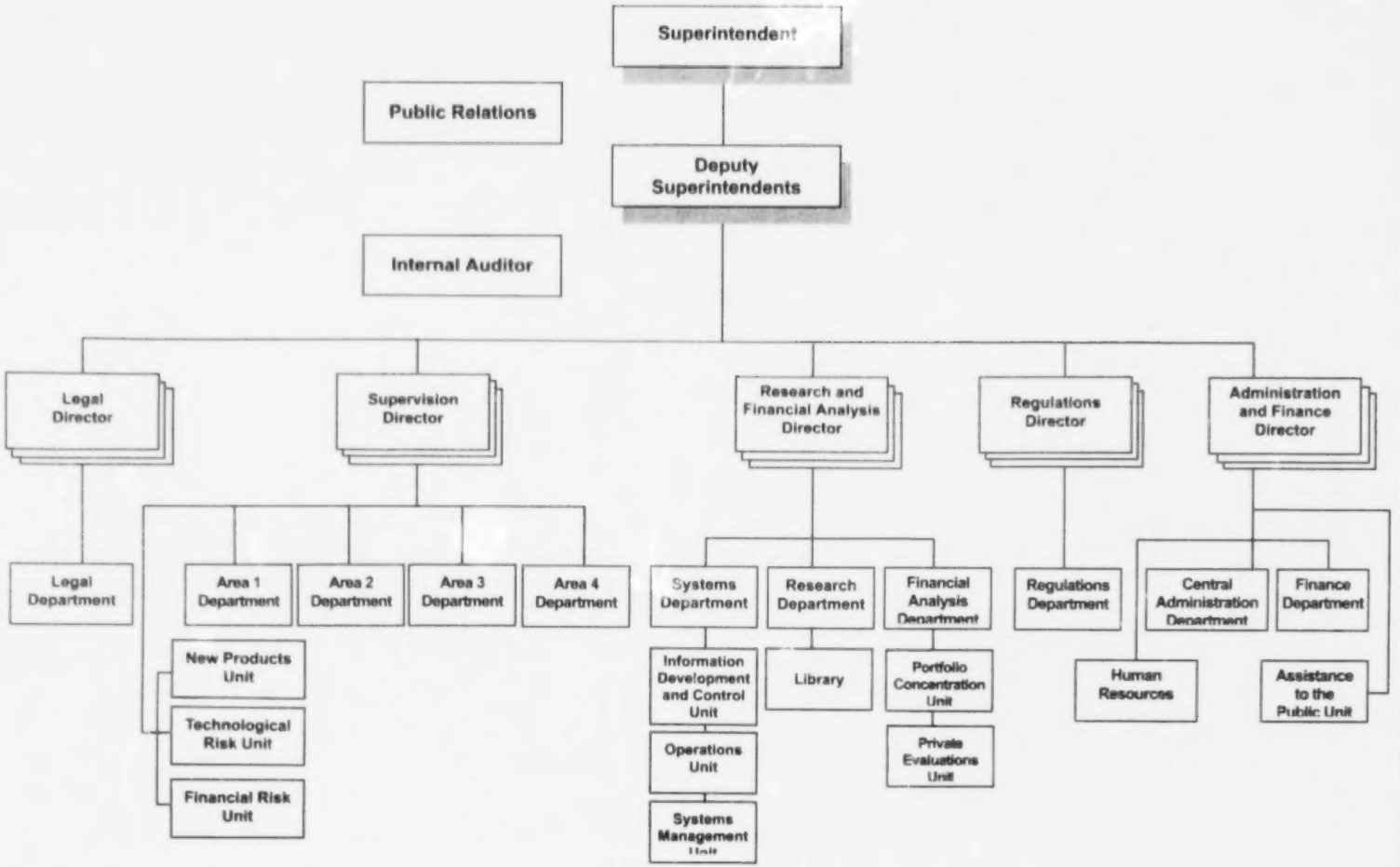
Measures to comply with the provisions of this Convention will be adopted as soon as it enters into force internationally and is ratified by Chile.

19. Other matters

Could Chile please provide an organizational chart of its administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, established to give practical effect to the laws, regulations and other documents that are seen as contributing to compliance with the resolution.

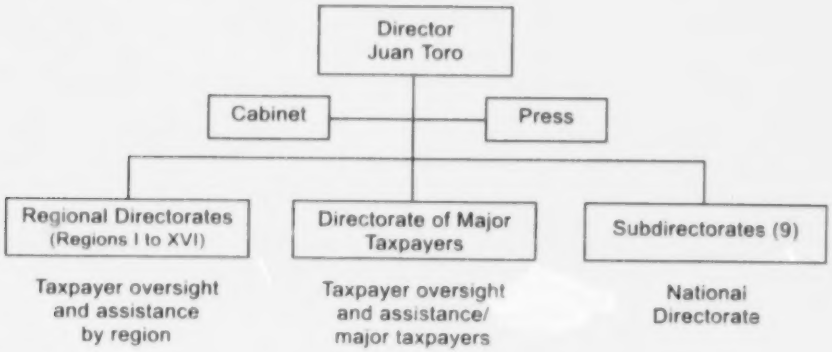
Annex 3 to this report contains the organizational charts issued by Chile's Internal Taxation Service, Superintendency of Banks and Financial Institutions, Superintendency of Securities and Insurance and National Customs Service, which provide the requested information.

Organizational chart of the Superintendency of Banks and Financial Institutions

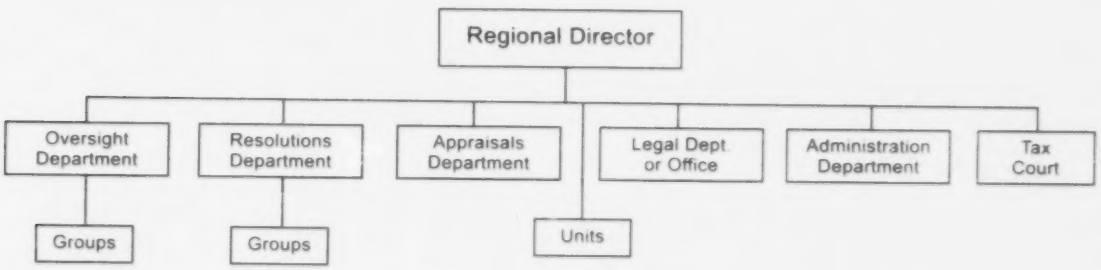


Internal Taxation Service of Chile

1. General organizational chart



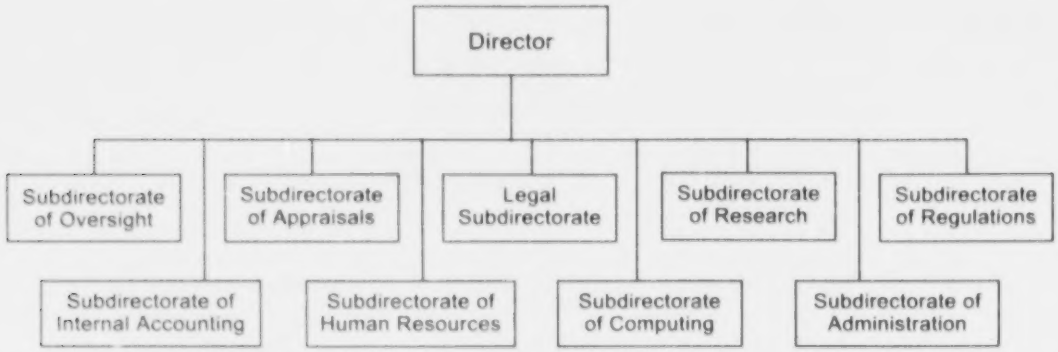
2. Organizational chart of Regional Directorates



3. Organizational chart: Directorate of Major Taxpayers

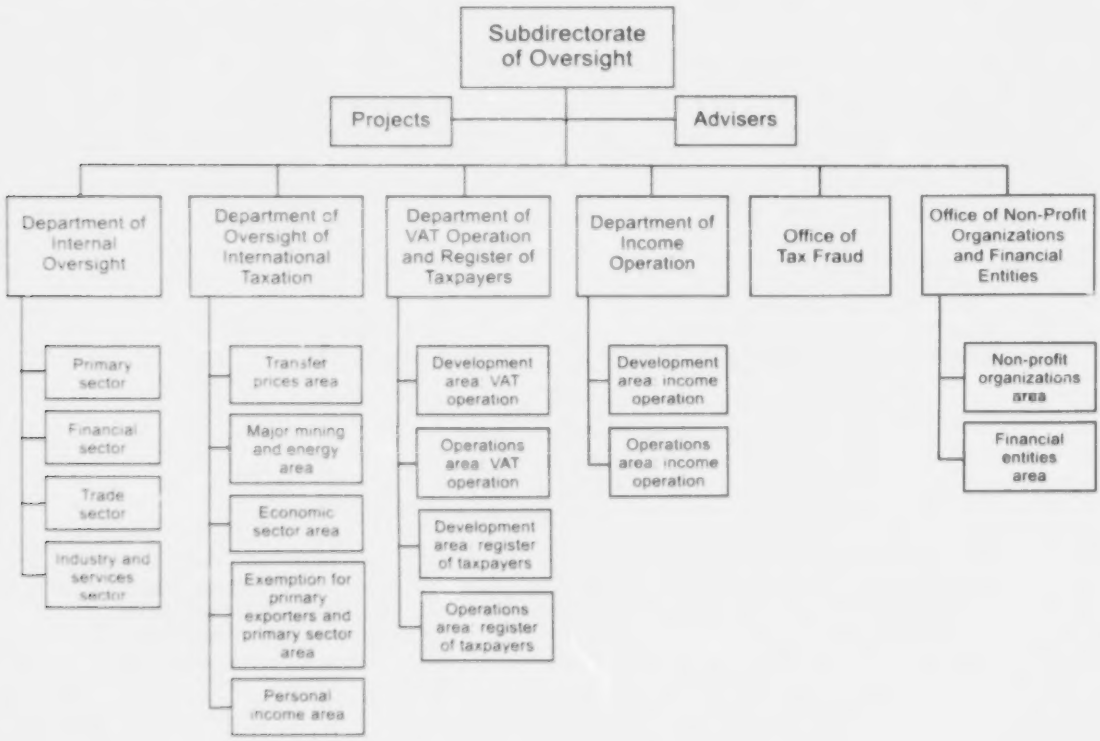
June 2002

4. General organizational chart: National Directorate

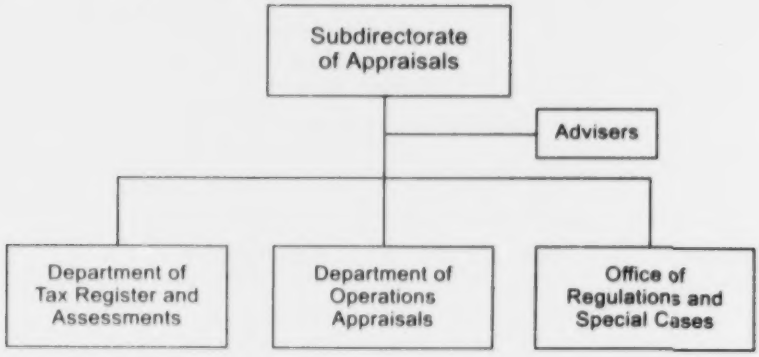


5. Detailed organizational charts of subdirectorates

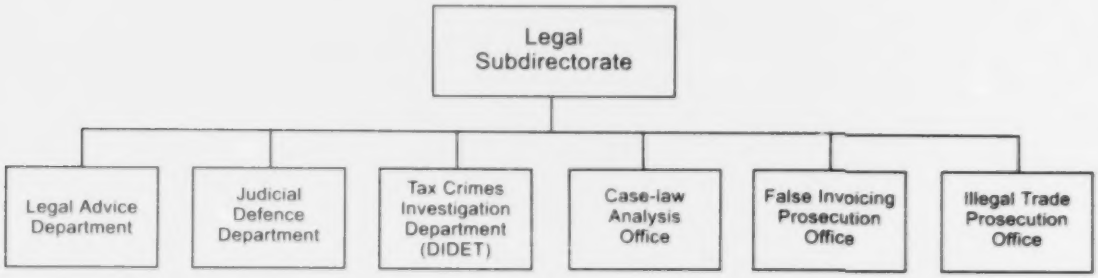
5.1. Subdirectorate of Oversight



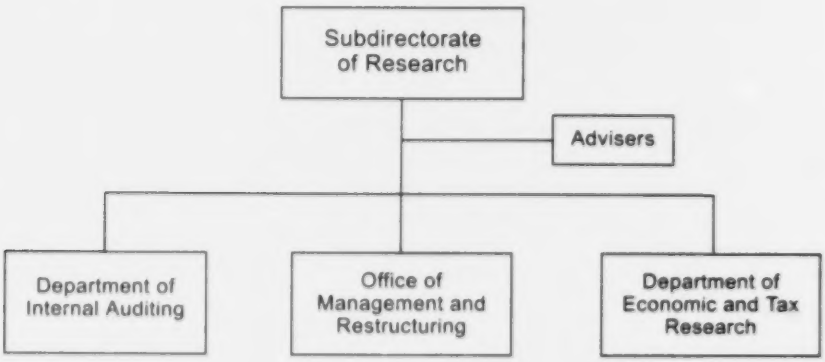
5.2. Subdirectorate of Appraisals


Subdirectorate of Appraisals
Advisers
Department of Tax Register and Assessments
Department of Operations Appraisals
Office of Regulations and Special Cases

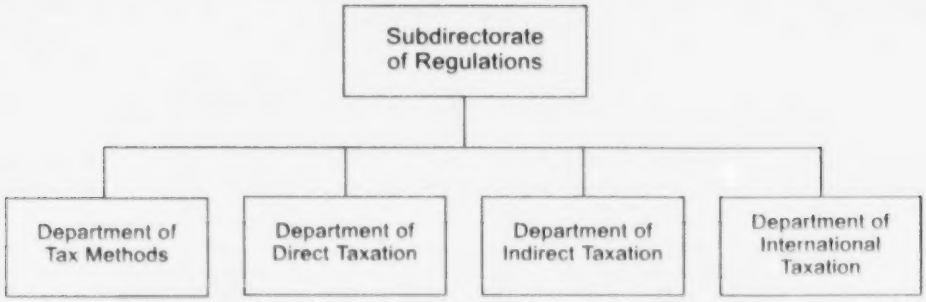
5.3. Legal Subdirectorate



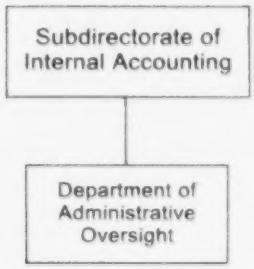
5.4. Subdirectorate of Research



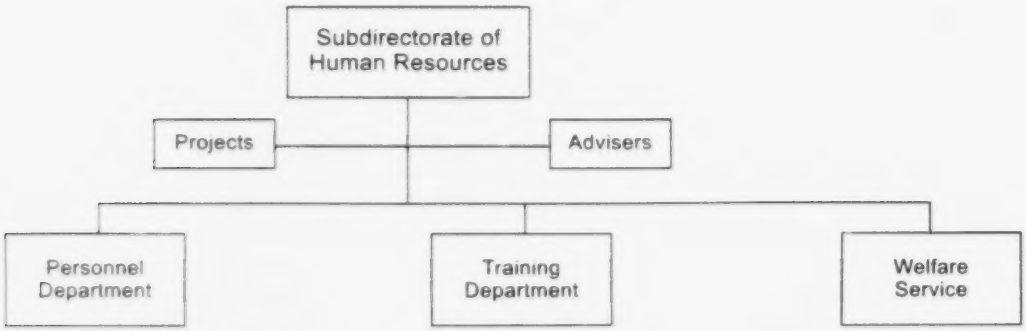
5.5. Subdirectorate of Regulations



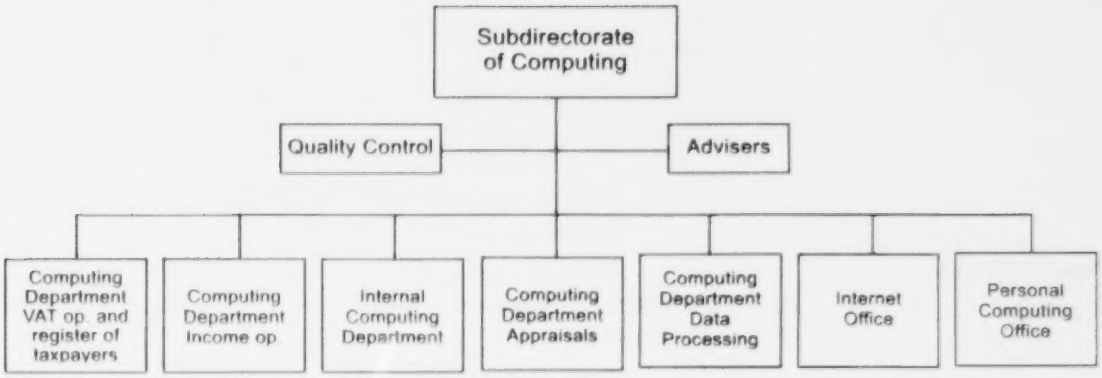
5.6. Subdirectorate of Internal Accounting



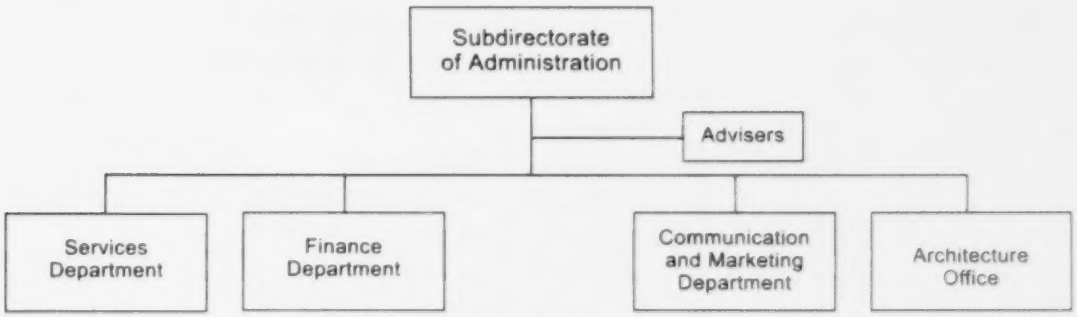
5.7. Subdirectorate of Human Resources



5.8. Subdirectorate of Computing



5.9. Subdirectorate of Administration



Organizational chart of the National Customs Service

E-mail

National Director

DEPARTMENT STAFF
- General Secretariat
- International Agreements
- Internal Auditing
- Research

SUBDIRECTORATES

Subdirectorate of Oversight

DEPARTMENTS
- Customs Intelligence
- National Supervision and Control Team
- Special Agents
- Drugs

Technical Subdirectorate

DEPARTMENTS
- Customs Procedures
- Customs Methods

Legal Subdirectorate

DEPARTMENTS
- Reports and Legal Advice
- Judicial Defence and Legal Control
- Administrative Investigation of Customs Crimes

Administrative Subdirectorate

DEPARTMENTS
- Goods and Services
- Finance

Computing Subdirectorate

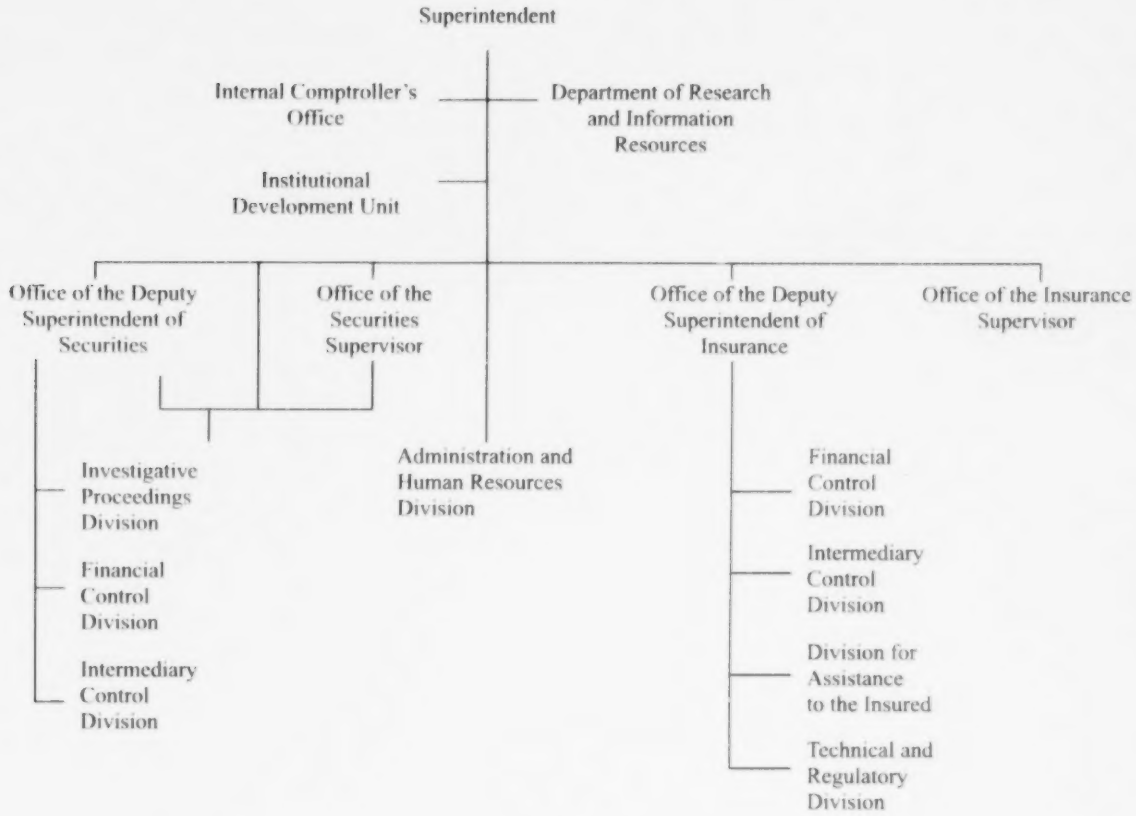
DEPARTMENTS
- Systems Management
- Systems Development
- Systems Operation

Human Resources Subdirectorate

DEPARTMENTS
- Personnel
- Training
- Welfare

REGIONAL CUSTOMS DIRECTORATES AND ADMINISTRATIONS

Organizational chart of the Superintendency of Securities and Insurance


Superintendent
Internal Comptroller's Office
Department of Research and Information Resources
Institutional Development Unit
Office of the Deputy Superintendent of Securities
Office of the Securities Supervisor
Office of the Deputy Superintendent of Insurance
Office of the Insurance Supervisor
Investigative Proceedings Division
Financial Control Division
Intermediary Control Division
Administration and Human Resources Division
Financial Control Division
Intermediary Control Division
Division for Assistance to the Insured
Technical and Regulatory Division

United Nations S/2002/1193

Security Council

Distr.: General
24 October 2002

Original: English

Letter dated 24 October 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 6 August 2002 (S/2002/897).

The Counter-Terrorism Committee has received the attached supplementary report from Germany, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

02-66375 (E) 051102

Annex

Letter dated 22 October 2002 from the Chargé d'affaires a.i. of the Permanent Mission of Germany to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

Enclosed please find my Government's supplementary report to the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism (see enclosure). I hope that this report will answer the questions of the Committee.

(*Signed*) Hanns **Schumacher**

Enclosure

Germany: supplementary report to the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

Introduction

On 27 December 2001, Germany submitted its report to the Counter-Terrorism Committee (CTC), prepared in compliance with paragraph 6 of Security Council resolution 1373 (2001). In a letter dated 15 July 2002, the CTC informed Germany that it had considered the report carefully, and put forward a number of preliminary comments/questions on the report. This supplementary report provides answers to those preliminary comments/questions.

Paragraph 1 (a)

Does Germany have any provision for regulating informal banking networks? Please outline such provisions.

According to section 32 of the German Banking Act in connection with section 1 (1a) no. 6 thereof, all banks in Germany have to be licensed and supervised by the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, BAFin). Informal banking networks are illegal under the German Banking Act.

Anyone who conducts banking business or provides financial services without the licence required under section 32 (1) sentence 1 will be punished by a term of imprisonment not exceeding three years or by a fine (section 54 (1) no. 2).

Since 1998 more than 1.000 informal financial networks have been detected by BAFin and their financial activities prohibited.

Are natural or legal persons other than banks (e.g. attorney, notaries) required to report suspicious transactions that might be linked to terrorist activities to the public authorities? If so, what penalties apply to persons who omit to report either wilfully or by negligence?

In Germany, it is not just financial institutions that are required to report suspicious transactions that might be used to finance terrorist organizations or would serve this purpose if accomplished. Companies and certain persons are also required to report such transactions, as laid down by section 11 of the new version of the Money Laundering Act (Geldwäschegesetz) (GwG) that entered into force on 15 August 2002 in accordance with the provisions set forth in Article 1, no. 2 of Directive 2001/97/EC issued by the European Parliament and the Council on 4 December 2001 amending Directive 91/308/EEC of the Council on the prevention of the use of the financial system for the purpose of money laundering. Pursuant to section 3, subsection 1 of the Money Laundering Act, lawyers, patent lawyers and notaries are also obliged to combat money laundering insofar as they are involved in certain transactions. The same applies to accountants, tax consultants, real estate agents, casinos and other businesspeople. However, limitations do apply to lawyers and notaries. They are not obliged to report suspicious transactions if the suspicion is based on information that was divulged within the framework of legal advice or representation in court.

Clear violations of the obligation to report suspicious transactions set forth in section 11 of the Money Laundering Act are subject to sanctions: on the one hand, if banks fail to meet their relevant obligations there is a possibility they can be sanctioned using bank supervisory instruments. On the other hand, section 261, subsection 5 of the German Criminal Code states that even (grossly) negligent involvement in money laundering activities constitutes a criminal offence. Those responsible for reporting suspicious transactions (e. g. bank staff), who should have recognised the dubious origin of the money, but who carried out the transaction nonetheless, run the risk of committing a criminal offence for taking part in money laundering activities. They can only avoid committing a criminal offence by reporting the hitherto undetected transaction voluntarily to the competent authorities (section 261, subsection 9 sentence 1 of the German Criminal Code). In these cases, failure to report suspicious transactions is thus indirectly also a punishable offence. In the year 2000, 14 persons were sentenced for *negligent* money laundering. In addition, anyone who fails to identify a person, who does not correctly note an observation, does not preserve the notes, fails to establish the correct name and address of the person to be identified, informs the party ordering the financial transaction or a party other than a public authority, fails to report such transactions to the competent authority at all or in due time, shall be deemed to have committed an administrative offence under section 17 of the Money Laundering Act. Any such administrative offences may be punished by a fine of up to € 100,000.

Please elaborate on the right of the Federal Office for the Protection of the Constitution (which according to sub-paragraph 2(b) of the report will also be granted to the Federal Intelligence Service) to request information from credit institutions, finance companies and financial service institutions about accounts, account-holders and "other authorized persons".

As the suicide attacks of 11 September 2001 have shown, foreign terrorist organizations did not just use the USA and other non-European and European countries to prepare their attacks, they also used Germany. Logistical preparations were made and funds provided here. In order to facilitate the earliest possible identification of terrorist activities, the Federal Office for the Protection of the Constitution and the Federal Intelligence Service have been given the power, by virtue of the Prevention of Terrorism Act (Terrorismusbekämpfungsgesetz), to seek information from banks and financial service institutions in order to investigate the flows of financial resources and account transactions. According to section 8, subsection 5 of the Federal Act for the Protection of the Constitution (Bundesverfassungsschutzgesetz), the Federal Office for the Protection of the Constitution is entitled, in individual cases, to ask credit institutions, financial service institutes and finance companies to provide information free of charge on accounts, account-holders and on any other authorized persons or parties involved in financial transactions as well as on financial transactions and investments, if this is required for the purpose of performing its duties and if there are actual grounds to suggest certain assets requiring protection are at serious risk. This enhanced investigative tool is intended to implement the demand raised by the UN Security Council in Resolution 1373 (2001) that funds and other financial assets or economic resources belonging to terrorist organizations be frozen. In the interest of fully disclosing the financial logistics of terrorism, the power to request information is confined not just to account-holders, but also extends to any persons who are authorized to access the account.

According to section 8, subsection 9 of the Federal Act on the Protection of the Constitution, information can only be requested pursuant to section 8 (5) by means of an application in writing by the President of the Federal Office for the Protection of the Constitution or by his representative giving reasons for the application. The Federal Ministry of the Interior, the Ministry empowered by the Federal Chancellor, decides whether or not the application should be granted. The Ministry informs the so-called "G 10 Commission" (based on the Act on Article 10 of the Basic Law regarding the privacy of correspondence, posts and telecommunications) every month about the decisions on the applications made prior to their execution. In case of imminent danger, the Federal Ministry can order the execution

of a decision even before notifying the G 10 Commission. The G 10 Commission, whose consultations are confidential, checks ex officio or on the basis of complaints filed whether it is permissible and necessary to obtain information. The Federal Ministry is obliged to nullify forthwith any decisions on information which the G 10 Commission deems impermissible or non-necessary. The party providing information is not permitted to notify the parties concerned or any third parties of the request for information or of the data transmitted.

The report states under sub-paragraphs 2 (f), 3 (d), and 3 (e) that Germany is in compliance with all relevant international conventions against terrorism. However, under sub-paragraph 1 (a) of the report, it is stated that an amendment to the German Criminal code is being considered in order to ensure that all forms of terrorist financing are covered by the Criminal Code. The CTC would welcome a progress report on that amendment.

The Thirty-fourth Criminal Law Amendment Act of 22 August 2002 (Federal Law Gazette 2002 Part I Number 61 of 29 August 2002, p. 3390) entered into force on 30 August 2002. By virtue of Article 1 no. 7 of this Act the list of offences preceding money laundering or concealment of unlawfully acquired assets in section 261 subsection 1, second sentence number 5, of the Criminal Code (StGB) has been supplemented by offences pursuant to section 129 of the Criminal Code (formation of criminal organizations) and section 129a subsection 3 of the Criminal Code (supporting terrorist organizations including foreign ones, recruiting for such organizations). Hence the list of offences preceding money laundering or concealment of unlawfully acquired assets (section 261 subsection 1, second sentence number 5 of the Criminal Code) now includes all criminal offences that aid the funding of terrorist organizations, including foreign organizations.

Please provide a progress report on the amendments to the Money Laundering Act (Geldwäschegesetz) aimed at extending the use of the mechanisms provided for in that Act in order to identify, prevent, and suppress the financing of terrorism.

Apart from the legal measures envisaged in the Money Laundering Act, a package of measures to combat money laundering and the funding of terrorist activities was introduced within the framework of the Fourth Financial Market Promotion Act which has been effective since 1 July 2002. According to the new section 24c of the Banking Act, the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, BAFin) may retrieve specific data about all accounts and securities accounts held in German banks. The BAFin may on request disclose information about this data to supervisory authorities, law enforcement authorities and courts. This measure is intended to assist in revealing money flows which support money laundering and terrorism.

According to the new section 25a banks are required to set up adequate internal computer systems to protect against money laundering, funding of terrorist activities and fraud. This is to allow business transactions to be screened for risk groups and suspicious features.

Paragraph 1 (b)

Germany intends to ratify the International Convention for the Suppression of the Financing of Terrorism. The CTC would therefore be grateful to receive a progress report regarding any proposed legislation to implement that Convention, especially Articles 2 and 4.

The German Government is currently drafting a bill on the ratification of the International Convention for the Suppression of the Financing of Terrorism. The *Bundestag* (Lower House of the German Parliament) and the *Bundesrat* (Upper House in which the Federal Länder are represented) have

recently adopted legislation aimed at extending the application of criminal provisions to terrorist and criminal organizations acting outside German territory. The bill has been published and the new provisions entered into force the 30th of August 2002.

Paragraph 1 (c)

Please outline the procedure leading to the freezing of funds or other financial assets or economic resources following a request by a foreign public authority. How long does it take in practice to freeze such funds etc. in such cases.

According to section 2 and section 7 of the Foreign Trade and Payments Act (Außenwirtschaftsgesetz AWG) it is possible in Germany to restrict legal transactions or activities concerning foreign trade and payments by an administrative act, if the provisions of section 2, para 2, and section 7, para 1, of the Foreign Trade and Payments Act are met. These provisions enable the German government to restrict legal transactions or activities concerning foreign trade and payments in order to

1. guarantee the security of the Federal Republic of Germany
2. prevent a disturbance of the peaceful coexistence of nations, or
3. prevent the external relations of the Federal Republic of Germany from being seriously disrupted.

According to our experience after 11 September these measures can be taken very quickly — within a few days — if sufficient evidence to fulfil the legal requirements is presented by the requesting foreign authority.

What measures has Germany taken or does it propose to take to freeze funds or other assets or economic resources of a person or entity supporting terrorism in Germany or in other EU countries?

Germany is in a position to restrict capital and payment transactions involving the persons or organizations targeted under UNSCR 1373 (2001) on the basis of sections 2 and 7 of the Foreign Trade and Payments Act. The provisions of those two sections enable the German Government to restrict transactions or activities concerning foreign trade and payments in order to protect against specific risks to the values referred to in section 7, subsection 1 of the Foreign Trade and Payments Act, cf. above.

Specifically, such measures can be applied against persons or entities supporting terrorism in other EU countries. To date, no such measures have been applied as Germany intends to adopt such measures in close coordination with its EU partners, a process that has been initiated by Germany and which is still ongoing. It should be noted that the German law of criminal procedure already provides for the securing of objects and seizure of property as a provisional measure (sections 111b and 111c of the Code of Criminal Procedure). These provisions apply to items that have been used in order to commit, plan or prepare an offence as well as to the proceeds of crime, irrespective of the nationality of the perpetrator of the offence. Although not intended as a special measure to combat terrorism, the provisions also cover items used for or intended to be used for terrorist purposes and proceeds derived from terrorist activities. Attachment in rem may be ordered in accordance with section 111d of the Code of Criminal Procedure to secure forfeiture or confiscation of equivalent value, a fine or the anticipated cost of criminal proceedings.

Paragraph 1 (d)

How does the financial tracking system ensure that funds received by associations are not diverted from their stated purposes to terrorist activities?

The new Money Laundering Act, in implementing the instructions of the Financial Action Task Force on Money Laundering (FATF) of October 2001, extends the obligation on all institutions operating in the financial sector to report suspicious transactions to cover the financing of terrorist activities. Section 11 of the Money Laundering Act now also obliges institutions to report suspicious findings if the facts suggest that a financial transaction might benefit a terrorist organization or would serve this purpose if accomplished. Even financial transactions of charities that may finance terrorist activities are covered by this section.

The legal requirements for banning inter alia so-called "associations of foreigners" have been enhanced within the framework of the Prevention of Terrorism Act (Terrorismusbekämpfungsgesetz) of 9 January 2002 in order to prevent terrorist groups from receiving financial support abroad. Pursuant to section 14, subsection 2, no. 5 of the Law governing Private Associations (Vereinsgesetz), an association of foreigners (an association all or most of whose members or leaders are non-EU nationals) can be banned if it supports organizations outside Germany that instigate, support or threaten attacks against persons or property. By banning Al-Aqsa e.V. 5 August 2002, Germany made use of this power for the first time.

To date, no financial tracking system (in Germany or elsewhere) has been developed which is in a position to ensure that funds received by associations are not diverted from their stated purposes to serve terrorist activities. Such a system would require that all financial activities and their complete economic background be transparent to the operator of that system. However, if funds are accepted by the receiving association as cashless payments in its account and these funds are transmitted onward to a third party on a cashless basis, the account-keeping bank is able under certain circumstances to note facts suggesting that the transfer serves the purposes of funding terrorist activities. According to section 25a of the German Banking Act, German banks are obliged to define adequate internal "know your customer standards" to enable them to detect transactions which seem to serve the purposes of financing terrorism.

Paragraph 2 (a)

European Council Directive 91/477/EEC of 1991 imposes on Germany, along with all other Member States of the EU, an obligation to allow the acquisition of a certain category of weapon only by persons who have a "good cause" for having such weapons and who are not likely to be a danger to public order or safety. The CTC would be grateful for clarification of what constitutes a "good cause" in Germany for these purposes and of the procedure to determine whether a person poses a danger to public order and safety.

Section 32 of the German Weapons Act (Waffengesetz) as currently in force stipulates that a good cause exists in particular if persons applying for a permit can prove credibly

1. that they require long-range weapons as holders of a valid annual hunting permit, i.e. as certified hunters who are in possession of an official hunting permit,
2. that they require firearms as hobby marksmen engaged in genuine sport in licensed firing ranges, for participation in proper shooting competitions or as members of traditional shooting associations,
3. that they are at far greater risk to life and limb than the general public, and purchasing firearms or ammunition is appropriate to minimize this risk, or

4. that they are active as technical or scientific collectors of arms or ammunition or plan to develop or expand a collection that is significant for cultural history, provided that it is sufficiently protected from unauthorized access.

Hobby marksmen who want to purchase a short-range weapon or a self-loading long-range weapon require a reference from a sports club stating that they have successfully taken part in club shooting exercises at regular intervals for at least six months and that they need the weapon to engage in the sporting discipline.

These provisions have been defined in greater detail in the amended version of the Weapons Act (Waffengesetz) now passed by the German Bundestag. In future, hobby marksmen will have to have been active for one year in order to be granted a reference from a sports club. Furthermore, sports clubs will in future be subject to an additional approval procedure aimed at ensuring that they do not serve the purpose of arms procurement.

Only persons who are deemed reliable within the meaning of the Weapons Act shall be granted a permit to hold weapons. It must be ruled out

- that weapons or ammunition will be used abusively or negligently,
- that the arms will not be used properly or will not be stored safely,
- that third parties who are not authorized to handle arms will have access to them.

As a rule, persons are deemed unreliable who have been finally convicted of betrayal of peace, treason, endangering the democratic rule of law, high treason, threatening external security, deliberately harming another person's life or health, rape, procurement of sexual services, civil disorder or unlawful entry, resistance against state authority, committing a crime that constitutes a public hazard or a pecuniary offence. The same applies to persons who have been finally convicted on at least two occasions of a criminal offence committed when inebriated, or who have been finally convicted of criminal negligence related to handling weapons, ammunition or explosives, violating the Weapons Act, the Act on the Control of War Weapons (Gesetz über die Kontrolle von Kriegswaffen), the Explosives Act (Sprengstoffgesetz) and the Federal Hunting Act (Bundesjagdgesetz) or who have repeatedly or grossly violated the provisions set forth in any of the above-mentioned Acts, even if not convicted.

Persons who are legally incapacitated or are limited in their ability to contract, who are addicted to drugs or alcohol, mentally ill or mentally incapacitated are also deemed unreliable.

The provisions governing reliability have also been amended by the new Weapons Act adopted by the German Bundestag which will probably enter into force in the first quarter of 2003. Unreliability is, in particular, no longer linked to the commission of certain types of criminal offence. Rather, persons are deemed unreliable if

- they have been sentenced to at least one year's imprisonment for committing a criminal offence or for a minor crime that was committed wilfully,
- they have been sentenced res judicata to imprisonment, been given a young offenders' sentence or a fine of at least sixty diem units or at least twice to a low fine for committing a criminal offence of intent, a negligent offence associated with the handling of weapons, ammunition or explosives, a negligent offence that constitutes a public hazard, violating the Weapons Act, the Act on the Control of War Weapons, the Explosives Act or the Federal Hunting Act.

As a rule, the following persons are also deemed unreliable:

- Members of an association that has been banned incontestably under the Law governing Private Associations (Vereinsgesetz), unless ten years have elapsed since the membership of such association was terminated;
- Members of an association that is subject to an incontestable ban on activities under the Law governing Private Associations (this applies to associations of foreigners that are not registered in Germany), unless ten years have elapsed since the membership of any such association was terminated;
- Members of a party that has been found to be unconstitutional by the Federal Constitutional Court under section 46 of the Act governing the Federal Constitutional Court (Bundesverfassungsgerichtsgesetz), unless ten years have elapsed since the membership of any such association was terminated;
- Persons who are pursuing or have pursued goals in the past five years, as individuals or as members of an association, that are directed against the constitutional order or the concept of international understanding, in particular against the peaceful coexistence of peoples;
- Violent persons who have been taken into court-ordered preventative custody by the police more than once in the past five years.

Furthermore, the provisions governing gross violations of the relevant legal provisions and on the non-suitability of legally incapacitated persons or persons who are limited in their ability to contract or addicted to drugs shall continue to apply.

The investigations conducted by the competent authorities shall take into consideration entries made in the Federal Central Criminal Register (crimes), in the central public prosecutors' case register (pending criminal proceedings) and findings of the competent police departments.

What export controls does Germany have in place to prevent terrorists from obtaining weapons?

The export of military weapons, for example machine guns, submachine guns and assault rifles is subject to a comprehensive licensing requirement. A licence for the export of such military equipment will only be granted for the export to state entities in the recipient country, i. e. the applicant for an export licence has to produce an official end-use certificate signed by the armed forces or the police forces of the country of final destination. A licence will only be issued if the export is in line with the Policy Principles of the Federal Government for the export of war weapons and other military equipment. A reason for denying a licence is for example the risk of diversion of the equipment to recipients other than those stated in the application. If a government has produced false end-use certificates all licence applications for that country will be rejected until further notice.

Paragraph 2 (b)

Please elaborate on how the "state's options for taking action against extremist associations of foreigners and foreign organizations have been increased and enhanced". Have they also been improved regarding extremist associations of German citizens?

In the wake of the terrorist attacks launched against the USA on 11 September 2001, two legislative packages were initiated in the Federal Republic of Germany aimed at enhancing the prevention of international terrorism.

1. As part of "Security Package I", as an emergency measure, the Law governing Private Associations was amended to cover religious communities by deleting the relevant exemptions in section 2, subsection 2,

no. 3 of this law. Now extremist religious or ideological groups can also be banned, regardless of the nationality of their members, i.e. regardless of whether they are Germans or foreigners if

- their goals or activities are directed at committing criminal offences,
- they oppose the constitutional order or
- they are directed against the concept of international understanding.

On 12 December 2001 the extremist Islamist organization "Kalifatsstaat" was the first religious group to be banned.

2. When the Prevention of Terrorism Act (Terrorismusbekämpfungsgesetz) entered into force on 1 January 2002 (also referred to as the Anti-Terror Act or "Security Package II"), the activities of extremist associations of foreigners were limited more effectively by extending the grounds for imposing bans or limiting activities (Article 9 – Amendments to the Law governing Private Associations).

Sections 14 and 15 of the Law governing Private Associations regulate the banning of associations of foreigners or their activities. The legislation previously in force did not provide sufficient scope for taking action against associations of foreigners that support violent or terrorist organizations, for instance, by making donations, recruiting terrorists or supporting them in any other way. This is why the grounds for banning private associations and for banning activities were extended to include associations of foreigners and international associations and more specific conditions for official action were defined.

The extension was based on the example of the existing rules governing bans on the political activity of individual foreigners, which are now contained in section 47 of the Residence Act (Aufenthaltsgesetz) (based on an amendment to the Aliens Act (Ausländergesetz) which did not change the wording of the paragraph). The most important new development that deserves mention is the possibility of banning associations of foreigners insofar as their purpose or activities

- promote activities outside the Federal Republic of Germany whose goals or instruments are incompatible with the basic values of a country that respects human dignity,
- support, advocate or solicit the use of violence as a means of accomplishing political, religious or other ends.
- The same applies to associations within or outside the Federal territory that instigate, support or threaten to launch attacks against persons or property.

This means the instruments relating to *collective* activities of foreigners have been aligned with the instruments limiting the political activities of *individual* foreigners as set forth in section 47 of the Residence Act. EU foreigners (EU citizens) are not affected by this; the amendments regarding associations of foreigners only apply to associations of third-state nationals from non-EU countries. Due to the universally applicable amendment to the Law governing Private Associations (i.e. which also applies to German nationals) within the framework of "Security Package I" (cf. number 1 above), extremist *religious-ideological* associations of foreigners are also affected by the extended powers to impose bans.

The new regulations were applied for the first time on 5 August 2002 when the association "Al-Aqsa e.V." was banned.

Paragraph 2 (b): Please explain on which grounds relevant to the implementation of this sub-paragraph the authorities will be able to ban associations of German and foreign citizens, once the Act governing Private Associations (Vereinsgesetz) is amended.

In response to the question, reference is made to the wording of section 3, subsection 1, sentence 1 and section 14, subsections 1 and 2 of the Law governing Private Associations:

Section 3, subsection 1, sentence 1 of the Law governing Private Associations (which applies to all associations):

An association can only be deemed prohibited (Article 9, para. 2 of the Basic Law) if it has been established by the decree of the authorities banning it, that its purposes or activities conflict with criminal laws or are directed against the constitutional order or the concept of international understanding, the decree shall order that the association be dissolved (banned).

Section 14, subsections 1 - 3 of the Law governing Private Associations (only applies to associations of foreigners who are third country nationals):

(1) Associations all or most of whose members or leaders are foreigners (associations of foreigners) can be banned above and beyond the reasons set forth in Article 9, para. 2 of the Basic Law under the circumstances set forth in subsection 2. Associations all or most of whose members or leaders are foreign nationals of a Member State of the European Union are not deemed associations of foreigners. (...)

(2) Associations of foreigners can be banned if their purpose or activities

1. impair or pose a threat to the formation of the political will of the people in the Federal Republic of Germany or to the peaceful coexistence of Germans and foreigners or various groups of foreigners within the Federal territory, to public security or order or any other major interests of the Federal Republic of Germany,
2. contravene the Federal Republic of Germany's obligations under international law,
3. promote activities outside the Federal Republic of Germany whose goals or means are incompatible with the basic values of a country that respects human dignity,
4. support, advocate or solicit the use of violence as a means of accomplishing political, religious or other ends,
5. support associations within or outside the Federal territory that instigate, support or threaten to launch attacks against persons or property.

(3) Instead of banning the associations, the authorities may also ban certain actions or certain persons of associations of foreigners. In all other respects the legal provisions governing the safeguarding of public security and order are not affected vis-à-vis associations of foreigners.

Paragraph 2 (b): Please provide the CTC with information on the mechanism for inter-agency cooperation, both at the federal level and between the Federal Government and the Government of the Länder, among the authorities responsible for narcotics control, financial tracking and security with particular regard to the border controls designed to prevent the movement of terrorists.

Police authority in the Federal Republic of Germany falls within the remit of the Federal Länder. Pursuant to Article 87, para. 1, sentence 2 of the Basic Law, central offices for police information and communications and for the criminal police may be established by federal legislation.

The "Law governing the Federal Criminal Police Office and Cooperation between the Federation and the Federal Länder in Matters concerning the Federal Criminal Police Office" (Gesetz über das Bundeskriminalamt und die Zusammenarbeit des Bundes und der Länder in kriminalpolizeilichen Angelegenheiten) (BKAG) therefore assigns also central coordination duties to the Federal Criminal Police Office. The Specialized "Police State Protection" Department set up at the Federal Criminal Police Office supports and coordinates the police forces of the Federal Länder in preventing and prosecuting criminal offences that are of national, international or major importance. It also collects and analyzes all the necessary information. The collection of information is essentially based on the "Federal Criminal Police Reporting Service – Politically-Motivated Crime (KPMD-PMK)" and a number of special reporting services that are copied into a data network system and are binding on the police forces of the Federal Länder by virtue of nationwide directives. Additional information is transmitted by the Intelligence Services or is gained within the framework of international cooperation. National cooperation between the police forces of the Federal Länder and the Federal Criminal Police Office is also coordinated within special cooperation bodies such as the State Protection Commission.

The Federal Office for the Protection of the Constitution, the Federal Intelligence Service and the Military Counterintelligence Service are responsible for investigating the preliminary stages of terrorist crime, also using intelligence service instruments. The information-related cooperation between the police and the intelligence services is regulated by statute. In order to guarantee the most comprehensive and smoothest cooperation possible, national coordination task forces have been set up in the various fields of terrorism. Furthermore, the so-called "Information Board" was established as a special form of cooperation. This deals with ongoing pooling and evaluation of police and intelligence service findings independent of specific cases that focus on identifying and preventing terrorist crimes.

The Federal Border Police, responsible for border control at the national external borders of the Schengen Area is closely involved in cooperation between police forces. Offenders for whom a search warrant has been issued by the German police forces are regularly publicized in the border search database. The Federal Border Police thus plays an important role in controlling the entry of terrorists.

As far as preventing the financing of terrorist groups is concerned, the forms of cooperation mentioned in the foregoing are also available here and are being used intensively. In all other respects, reference is made to the answers given to the issues raised in paragraph 1.

As the national central office for police information and intelligence services and for the criminal police, the Federal Criminal Police Office supports the police forces of the Federation and the Federal Länder in their measures to combat trafficking in narcotics. As the central offices of the Federal Länder, the Criminal Offices of the Federal Länder are responsible in the field of drug prevention for the collection, evaluation and forwarding of information and, as a rule, also for conducting investigations of supraregional character. The various local authorities, such as police headquarters and directorates, report to the Criminal Police Offices of the Federal Länder and are responsible for the criminal and general police services. The Federal Criminal Police Office therefore cooperates closely with the police forces of the Federal Länder, the Federal Border Police, the Central Office of the German Customs Investigation Service and the customs and tax investigation authorities in evaluations and investigations. On the basis of the rights and obligations assigned to them, an exchange of information

takes place in concrete individual cases between the Federal Criminal Police Office and the Federal Intelligence Service. The Federal Criminal Police Office and the Federal Border Police report to the Federal Ministry of the Interior, whereas the Central Office of the German Customs Investigation Service reports to the Ministry of Finance. The customs administration includes, at regional level, the customs investigation service, which reports to the Central Office of the Customs Investigation Service and has competencies that are geographically limited. The customs authorities have original competencies regarding prosecution insofar as this is required in connection with monitoring the cross-border movement of goods. This also includes responsibility for conclusive investigations aimed at seizing narcotics in the field of import smuggling. In principle, the customs authorities can avail themselves of the same legal instruments as the police.

The Federal Criminal Police Office and the Central Office of the German Customs Investigation Service cooperate horizontally within the framework of the "Joint Customs/
Police Precursor Control Unit". At the level of the Federal Länder, there are so-called "Joint Drugs Investigation Groups" comprising representatives of the police forces of the Federal Länder and customs authorities.

The cooperation between the Federal Government and the Federal Länder in combating narcotics-related crime is primarily coordinated within the framework of the work performed by joint bodies. Special mention must be made of the "Permanent Working Group on Narcotics" that has been convening twice a year since 1972 under the chairmanship of the Federal Criminal Police Office and brings together the heads of the central narcotics offices in Germany and the bordering countries. Furthermore, case-related meetings take place between the heads of the central narcotics offices of the Federation and the Federal Länder.

Paragraph 2 (c)

Please elaborate on the restrictions provided for in the Prevention of Terrorism Act (Terrorismusbekämpfungsgesetz).

The amendments made to the Residence Act (Aufenthaltsgesetz) within the framework of the Prevention of Terrorism Act envisage, inter alia, refusal to grant visas or residence permits to persons who pose a threat to the free democratic order or security of the Federal Republic of Germany, to persons who participate in violence in pursuit of political goals, to persons who publicly call for the use of violence or who are proven to belong to an association that supports international terrorism. In doing so, the findings of the federal security authorities and the Central Aliens Registry are used. Foreigners will also be deported if facts prove that they belong to an association that supports international terrorism or if they support any such association.

Are there any provisions under the existing laws which exclude from access to Germany persons of the kind mentioned in sub-paragraph 2 (c)?

Please refer to the previous answer.

Paragraph 2 (d)

Which are the offences listed in sub-paragraph 2 (d) of the Resolution which "can only be prosecuted in Germany, if the offence also incurs criminal liability in the country where it was committed"?

Sections 5 and 6 of the German Criminal Code enumerate a wide range of criminal offences which can be prosecuted by German authorities regardless of where the crimes were committed. In addition to the offences listed, section 7 of the German Criminal Code provides for the application of German criminal

law to offences committed abroad, provided that the victim of the offence is a German national and that the offence is a punishable crime in the country where the offence was committed, or if the place where the offence was committed is not subject to criminal law enforcement. Under this provision, German criminal law also applies if the perpetrator was a German national at the time he or she committed the offence, or if he or she became a German national after committing the offence. The provision further applies if the perpetrator was a foreigner, but was found to be in Germany and cannot be extradited, although the Extradition Act would permit extradition for such an offence.

Please provide the CTC with a progress report on the proposed amendments aimed at extending the criminal provisions applicable to terrorist organizations and their global activities.

The *Bundestag* and the *Bundesrat* have recently adopted legislation aimed at extending the application of section 129a of the German Criminal Code to terrorist and criminal organizations abroad. Section 129a of the German Criminal Code imposes criminal liability upon persons who form an organization whose objectives and activities are aimed at committing a number of specified and serious crimes. Participation in or support of such an organization are also deemed to be criminal offences. The new bill provides that the Ministry of Justice may authorize the prosecution of such organizations acting outside of Germany and the European Union.

What measures are in place to prevent or punish the activities of terrorist organizations operating from Germany, (fund-raising for example) for a cause not likely to affect German interests?

Criminal prosecution of terrorist or criminal organizations acting in Germany is dependent upon whether there are sufficient grounds to deem that their activities are punishable according to section 129a of the German Criminal Code. This also applies to the participation in or the support of such organizations, which includes making financial contributions and donations to them.

Paragraph 2 (f)

What is the legal timeframe within which a request for judicial assistance in criminal investigations or criminal proceedings (especially those relating to the financing or support of terrorist acts) is required to be met and how long does it actually take in practice to implement such a request in Germany?

There is no legal timeframe required to be met for a request for judicial assistance in criminal investigations or criminal proceedings.

The implementation of a request for judicial assistance depends, of course, upon what is requested.

Requests made by most Member States of the European Union can be addressed directly to the German judicial authorities responsible for the implementation of such a request. In most other cases, requests for judicial assistance can be directed to the Federal Ministry of Justice or to the Regional Ministries of Justice pursuant to the applicable international agreements.

No official statistics are kept on mutual legal assistance cases in Germany. It is hence not possible to provide statistical information on the time taken for processing. However, once a request has been granted, implementation normally takes between one and three months. Requests relating to terrorism are given priority.

Paragraph 3 (a)

The report states under sub-paragraph 2 (b) that statutory amendments have been submitted to parliament, in particular in order to monitor the use of communication technologies by terrorist groups. Could Germany please indicate how it intends to intensify and accelerate the exchange of operational information with other States in this regard?

Germany avails itself of all available cooperation frameworks and has to this end ratified the necessary international treaties. The same is true of the exchange of operational information. Information on the cross-border movement of terrorists is passed on immediately within the framework of the structured exchange of intelligence, even if this information is initially based on findings of the intelligence services. This applies in particular to the use of falsified or forged passports and to trafficking in weapons, explosives or other sensitive materials, which as a rule constitute criminal offences. The Federal Criminal Police Office has specialized offices for combating the criminal use of modern communications technologies or weapons of mass destruction by terrorists or terrorist groups. Germany is also actively involved in relevant forms of cooperation that have been developed specifically for this purpose.

Paragraph 3 (d)

The CTC would welcome a progress report, in relation to the international conventions and protocols relating to terrorism, on the steps taken with regard to:

- *becoming a party to the instruments to which Germany is not yet a party, and*
- *enacting legislation, and making other necessary arrangements, to implement the instruments to which it has become a party.*

As stated in the initial report to the Counter Terrorism Committee, Germany has ratified all but two of the twelve international conventions and protocols against terrorism. As a rule, Germany enacts all necessary legislation before becoming party to an international convention, so no further action was required with regard to the first ten agreements. Germany can comply with all the obligations contained in all twelve conventions on the basis of domestic law, including international cooperation, even in the absence of an international convention.

A law on the ratification of the International Convention for the Suppression of Terrorist Bombings has been approved by the *Bundestag* and the *Bundesrat* and will enter into force shortly, allowing for the deposition of the instrument of ratification in the near future. A similar law on the ratification of the International Convention for the Suppression of the Financing of Terrorism is currently being drafted (cf. the answer to the question on Paragraph 1 (b)).

Paragraph 3 (e)

Have the offences set forth in the relevant international conventions and protocols relating to terrorism been included as extraditable offences in the bilateral treaties to which Germany is party?

Pursuant to German law, any offence is considered extraditable which is punishable by at least a maximum term of imprisonment of one year under German law or, if German law does not apply, provided that the offence would be punishable if German law were applicable (section 3(1) of the Law on International Judicial Assistance). The offences detailed in the relevant international agreements are punishable offences which meet this requirement.

Paragraph 3 (f)

According to the report, the "Federal Agency for the Recognition of Foreign Refugees" (BAFl) automatically informs the Federal Office for the Protection of the Constitution if it learns of any facts during asylum proceedings that threaten the security of the Federal Government or a Federal Land with the use or preparation of violence". Is the Federal Agency for the Recognition of Foreign Refugees under a legal obligation to so inform the Federal Office for the Protection of the Constitution? Please elaborate.

The same agency "can also pass on to the prosecution authorities any data collected in asylum proceedings for the purposes of a criminal prosecution". According to sub-paragraph 2 (b) of the report, this agency and the "aliens authorities" will also "be permitted, under certain circumstances, to transmit at their own initiative any data that has come to their attention about endeavours or activities which the authorities responsible for protecting the constitution are permitted to collect and evaluate information on, if there are concrete grounds to suggest the transmission of such data is necessary to enable the authorities responsible for protecting the Constitution to perform their duties". Please clarify whether the data referred to above can be transmitted at the discretion of the Federal Agency for the Recognition of Foreign Refugees and of the "aliens authorities" or whether they are under a legal obligation to transmit the data if the data concerns persons supporting terrorism.

The new section 18, subsection 1a, sentence 1 of the Federal Act on the Protection of the Constitution specifies that the Federal Agency for the Recognition of Foreign Refugees shall at its own initiative inform the Federal Office for the Protection of the Constitution of any information that has come to its attention, including personal data, on efforts or activities defined in section 3, subsection 1 of the Federal Act on the Protection of the Constitution (that also applies to supporting terrorism), if there is actual evidence to suggest that the transmission of such data is necessary for the performance of tasks by the authorities responsible for the protection of the constitution. The same applies to aliens authorities that are likewise obliged to notify the relevant Land authorities responsible for the protection of the constitution.

Please provide a detailed description of the amendments intended to implement sub-paragraphs 2 (f) and (g) that are included in the Prevention of Terrorism Act recently introduced into the German Parliament.

We are at present unable to provide more detailed descriptions of the planned amendments of the Prevention of Terrrorism Act, since the legislation is still in progress.

Paragraph 4

Has Germany addressed any of the concerns expressed in paragraph 4 of the Resolution, in particular regarding transnational organized crime?

In the areas mentioned in paragraph 4 of UN Security Council Resolution 1373, the Federal Criminal Police Office is involved in intensive cooperation at international level. This includes active involvement in Europol activities. Germany has also signed the UN Conventions on Terrorism, Drugs and Organized Crime and has already implemented most of them.

As a response to the links between international terrorism and international organized crime, the instruments competing money laundering which serve the prevention of organized crime were extended to suppress the financing of terrorism by the Money Laundering Act which entered into force in August. In this connection, a

Financial Intelligence Unit was set up at the Federal Criminal Police Office which is in particular responsible for cooperating with the competent central offices of other countries on the prosecution of money laundering and the financing of terrorist groups.

Other matters

Could Germany please provide an organisational chart of its administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, established to give practical effect to the laws, regulations and other documents that are seen as contributing to compliance with the Resolution.

Cf. attachment.

Please provide the CTC with a progress report on the Prevention of Terrorism Act (Terrorismusbekämpfungsgesetz).

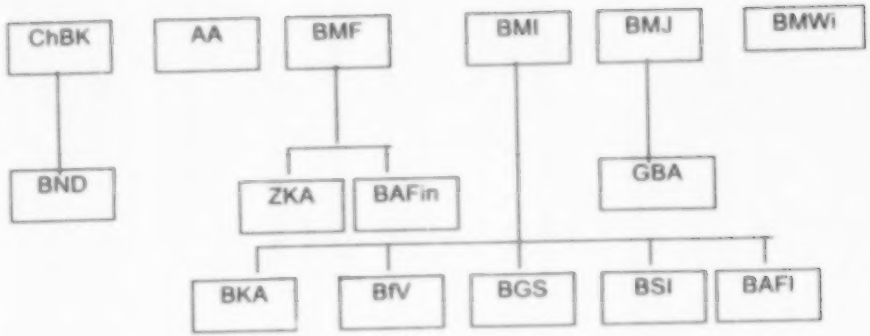
The Prevention of International Terrorism Act that entered into force on 1 January 2002 (Prevention of Terrorism Act) bestowed the necessary powers on the German security authorities to effectively counteract the new form of international terrorism less than 4 months after the terrorist attacks of 11 September 2001. Amendments have been made to numerous security statutes in order to

- extend the powers of security authorities in the interest of preventing terrorism,
- enhance the necessary data exchange between the authorities,
- prevent terrorists from entering Germany,
- enhance the identification of extremists who have already entered the country and increase the options for terminating their residence,
- enhance identification measures in visa procedures,
- facilitate the deployment of armed air marshals on German aircraft,
- enhance border control facilities,
- enable security checks on staff employed in essential facilities and facilities that are vital for defence,
- create the legal basis for integrating biometric data into passports and identity documents,
- limit the right to use firearms on board civilian aircraft to police officers,
- take swifter measures to ban activities of extremist associations of foreigners in Germany.

Insofar as the security authorities of the Federation and the Federal Länder have received direct new powers by virtue of these statutory amendments, they have also made use of them since the Act entered into force.

Some of the statutory amendments realized in the Prevention of Terrorism Act still require further implementation measures. The security authorities of the Federation and the Federal Länder began to take the necessary measures as soon as the Act entered into force on 1 January 2002. These entail comprehensive modifications to information technology. Intensive preparations are also being made for the use of biometric data in passports and identity documents.

Organizational chart



ChBK	Bundeskanzleramt	Federal Chancellery	http://www.bundeskanzler.de
AA	Auswärtiges Amt	Federal Foreign Office	http://www.auswaertiges-amt.de
BMF	Bundesministerium der Finanzen	Federal Ministry of Finance	http://www.bundesfinanzministerium.de
BMI	Bundesministerium des Innern	Federal Ministry of the Interior	http://www.bmi.bund.de
BMJ	Bundesministerium der Justiz	Federal Ministry of Justice	http://www.bmj.bund.de
BMWi	Bundesministerium für Wirtschaft und Technologie	Federal Ministry of Economics and Technology	http://www.bmwi.de
BAFin	Bundesanstalt für Finanzdienstleistungsaufsicht	Federal Financial Supervisory Authority	http://www.bafin.de
BAFl	Bundesamt für die Anerkennung ausländischer Flüchtlinge	Federal Agency for the Recognition of Foreign Refugees	http://www.bafl.de
BfV	Bundesamt für Verfassungsschutz	Federal Office for the Protection of the Constitution	http://www.verfassungsschutz.de
BGS	Bundesgrenzschutz	Federal Border Police	http://www.bundesgrenzschutz.de
BKA	Bundeskriminalamt	Federal Criminal Police Office	http://www.bka.de
BND	Bundesnachrichtendienst	Federal Intelligence Service	http://www.bundesnachrichtendienst.de
GBA	Generalbundesanwalt	Public Prosecutor General	http://www.generalbundesanwalt.de
ZKA	Zollkriminalamt	Central Office of the German Customs Investigation Service	http://www.zollkriminalamt.de

Organizational charts of the respective ministries and agencies are available at their respective websites. Not included in this chart is the administrative machinery of the Länder, which have responsibilities in such areas as police or taxation.

G11/2002/1193

United Nations S/2002/1194

Security Council

Distr.: General
24 October 2002
English
Original: Spanish

Letter dated 23 October 2002 from the Permanent Representative of El Salvador to the United Nations addressed to the President of the Security Council

I have the honour to transmit to you, in your capacity as President of the Security Council for October, a letter dated 16 October 2002 from the Minister for Foreign Affairs of El Salvador, María Brizuela de Avila, addressed to you pursuant to the 1992 Judgment of the International Court of Justice on the frontier dispute between El Salvador and Honduras (see annex).

On behalf of my Government, I wish to request the issuance of the letter and the appendices thereto as documents of the Security Council.

(*Signed*) Víctor Manuel Lagos **Pizzati**
Ambassador
Permanent Representative

02-67402 (E) 131102 141102

Annex to the letter dated 23 October 2002 from the Permanent Representative of El Salvador to the United Nations addressed to the President of the Security Council

I have the honour to refer to the letter dated 17 September 2002 from the Minister for Foreign Affairs of the Republic of Honduras addressed to the President of the Security Council (S/2002/1088) requesting circulation of the note annexed thereto for information purposes as a document of the Security Council.

The letter states that the authorities of Honduras and El Salvador have agreed to start the process of delimitation of the common frontier as defined in the Judgment of the International Court of Justice of September 1992.

In this regard, I have the honour to confirm the information provided by the Minister for Foreign Affairs of Honduras to the effect that the two Presidents successfully concluded an agreement on delimitation of the common land frontier as defined in the Judgment of the International Court of Justice of 11 September 1992, with the exception of the sixth sector, since, as you will be aware, El Salvador has filed an application for revision of the Judgment, based on the existence of new facts, with the International Court of Justice.

The note attached by the Minister for Foreign Affairs of Honduras does not constitute the only communication on the matter which has been under discussion by the Foreign Ministries of the two States, as there are other notes on the matter from both El Salvador and Honduras.

In this regard and for the same information purposes invoked by Honduras, I have the honour to transmit herewith the complete set of notes exchanged between our two countries (see appendices 1-7), including the note dated 15 October 2002 addressed by my Government to the Government of Honduras (see appendix 7), so that the Council of which you are President and its countries are fully informed about the case, in view of which I request their circulation as documents of the Security Council.

(*Signed*) Maria **Brizuela de Avila**
Minister for Foreign Affairs

Appendix 1

Republic of Honduras

Tegucigalpa, 7 August 2000

Madam,

I have the honour to extend to you a cordial invitation for our two States, as sole riparians of the Bahía de La Unión in which the three-nautical-mile belts of the two States overlap, to commence the delimitation thereof, in the fullest spirit of fraternity, by means of special representatives.

Accept, Madam, the assurances of my highest consideration.

(*Signed*) Roberto **Flores Bermúdez**
Minister for Foreign Affairs

Her Excellency Mrs. María Eugenia Brizuela de Avila
Minister for Foreign Affairs
Republic of El Salvador

Appendix 2

Ministry of Foreign Affairs

DM No. 51/01

San Salvador, 25 April 2001

Sir,

I have the honour to refer to your note of 7 August 2000, in which you extend a cordial invitation for our two States, as sole riparians of the Bahía de La Unión in which the three-nautical-mile belts of the two States overlap, to commence the delimitation thereof, in the fullest spirit of fraternity, by means of special representatives.

I wish to inform you that our Government, on the date of receipt of the offer, took formal cognizance of the invitation extended by your Government and that, in the same spirit of fraternity, your offer for the bilateral delimitation of the Bahía de La Unión is under due consideration and study, with a view to giving you a prompt response.

Accept, Sir, the assurances of my highest consideration.

(*Signed*) María Eugenia **Brizuela de Avila**
Minister for Foreign Affairs

His Excellency Mr. Roberto Flores Bermúdez
Minister for Foreign Affairs
Republic of Honduras

Appendix 3

Ministry of Foreign Affairs

DM/No.

San Salvador, 9 November 2001

Sir,

I have the honour to refer to your note dated 7 August 2000 and my acknowledgement of receipt dated 25 April 2001.

In your note of 7 August, you extend to our Government a cordial invitation for our two States, as sole riparians of the Bahía de La Unión in which the three-nautical-mile belts of the two States overlap, to commence the delimitation thereof, in the fullest spirit of fraternity, by means of special representatives.

In my reply dated 25 April 2001 I stated that our Government, on the date of receipt of the offer, had taken formal cognizance of the invitation extended by your Government and that, in the same spirit of fraternity, your offer for the bilateral delimitation of the Bahía de La Unión was under due consideration and study, with a view to giving you a prompt response.

In this regard and after study of the matter, I have the honour to state that my Government enthusiastically welcomes the initiation of a frank and sincere dialogue between our two Governments, on the basis of negotiations in good faith, with a view to further strengthening and deepening the regional integration process by concluding the necessary agreements.

Accordingly, my Government agrees to the appointment of special representatives from both States in order to begin the negotiations for the delimitation or demarcation of these waters in which, because of their proximity, the belts overlap over which the two States have jurisdiction in their exclusive maritime coastal areas adjacent to the mainland and islands, including the maritime spaces of the Salvadoran islands of Meanguera and Meanguerita and the maritime spaces of the Honduran island of El Tigre, on the basis of an arrangement or agreement in keeping with the principles recognized by international law.

Further, my Government understands your offer to mean that the said representatives will take account, in the dialogue to be held on the maritime spaces contiguous to the mainland and islands, of the special situation of the maritime spaces contiguous to the Salvadoran island of Conejo, so that by means of a frank and sincere dialogue we may reach agreements that are fair to both States.

His Excellency Mr. Roberto Flores Bermúdez
Minister for Foreign Affairs
Republic of Honduras

My Government wishes to state expressly that the commencement of this frank and sincere dialogue proposed by your Government and accepted by mine in a spirit of cooperation and good faith does not mean that the State of El Salvador waives its right to use the remedy of revision within a period of 10 years in the event of the existence of a new fact, with regard to both the maritime area in question and the Salvadoran islands to which the three miles of maritime space are contiguous, the delta of the river Goascorán and the remaining sectors that were the subject of a dispute, unless the talks between our respective representatives result in an agreement.

My Government wishes to express its satisfaction at the offer extended to it and again reiterates that our special representatives will come to the talks duly informed and prepared to negotiate in good faith an agreement that is fully satisfactory to both parties.

Accept, Sir, the assurances of my highest consideration.

(*Signed*) María Eugenia **Brizuela de Avila**
Minister for Foreign Affairs

Appendix 4

Ministry of Foreign Affairs
Republic of Honduras

Note No. 024-DSM

Tegucigalpa, 18 January 2002

Madam,

I have the honour to refer to your note dated 9 November 2001 concerning my suggestion made on 7 August 2000 that our two Governments should begin a dialogue on the delimitation of the waters of the Bahía de La Unión.

My Government's invitation to establish a joint commission to enable a frank and sincere dialogue, based on good faith and fraternity, to be conducted on delimiting the Bahía de La Unión did not impose any conditions as to the issues that commission members might decide to discuss.

Accordingly, I regret that I cannot accept the conditions set forth in your note of 9 November 2001, since I believe that it will be for the members of the commission to decide what issues to discuss. Such discussion will have to be guided by the principles and norms of international law and by the provisions of the 11 September 1992 Judgment of the International Court of Justice, which is binding on both States.

Accept, Madam, the renewed assurances of my highest consideration.

(*Signed*) Roberto **Flores Bermúdez**
Minister for Foreign Affairs

Her Excellency Mrs. María Eugenia Brizuela de Avila
Minister for Foreign Affairs
El Salvador

Appendix 5

Ministry of Foreign Affairs

No. 27/02

San Salvador, 3 April 2002

Sir,

I have the honour to refer to the note dated 18 January 2002 sent to my office by the then Minister for Foreign Affairs, Mr. Roberto Flores Bermúdez, in which he responded to my note dated 9 November 2001 referring to the cordial invitation extended in his Ministry's note of 7 August 2000 for our two States, as sole riparians of the Bahía de La Unión in which the three-nautical-mile belts of the two States overlap, to commence the delimitation thereof, in the fullest spirit of fraternity, by means of special representatives.

In this connection, my Government, as I indicated in my note of 9 November 2001, has enthusiastically welcomed your offer of bilateral delimitation talks and has proposed the initiation of a frank and sincere dialogue between our two States, on the basis of negotiations in good faith, with a view to further strengthening and deepening the regional integration process.

Accordingly, my Government has expressed its agreement to the appointment of special representatives from both States in order to begin the negotiations for the delimitation of those waters of the two States which overlap in the belts over which El Salvador and Honduras have jurisdiction in their exclusive maritime coastal areas adjacent to the mainland and islands.

In this connection, my Government believes that the joint commission to be entrusted with this process will have to be guided in its negotiations by the 9 March 1917 Judgment of the Central American Court of Justice, the 11 September 1992 Judgment of the International Court of Justice, State practice and the principles and norms of international law.

My Government wishes to reiterate that the spirit now guiding our Governments is a guarantee of success and to assure you that our special representatives will be prepared to negotiate in good faith an agreement that satisfies the interests of both parties.

Accept, Sir, the renewed assurances of my highest consideration.

(*Signed*) María Eugenia **Brizuela de Avila**

His Excellency Mr. Guillermo Augusto Pérez Arias
Minister for Foreign Affairs
Republic of Honduras

Appendix 6

Ministry of Foreign Affairs
Republic of Honduras

Note No. 087-DSM

Tegucigalpa, 9 September 2002

Madam,

I have the honour to acknowledge receipt of your note No. 27/02 of 3 April 2002 in which you refer to the cordial invitation extended by Honduras in the note of 7 August 2000 for our two States, as sole riparians of the Bahía de La Unión in which the three-nautical-mile belts of the two States overlap, to commence the delimitation thereof, in the fullest spirit of fraternity, by means of special representatives.

In your note you also state that your Government has expressed its agreement to the appointment of special representatives from both States in order to begin the negotiations for the delimitation of those waters of the two States which overlap in the belts over which El Salvador and Honduras have jurisdiction in their exclusive maritime coastal areas adjacent to the mainland and islands.

My Government also wishes to assure you of its fraternal feelings towards your country and your Government in respect of any discussions that might result in new agreements concerning the waters both inside and outside the Bay of Fonseca, on the understanding that the Judgment of the International Court of Justice of 11 September 1992 incorporates and subsumes the 1917 Judgment of the Central American Court of Justice, the principles and norms of international law and the practice of riparian States of the Gulf.

If this basis is acceptable to you, I shall be pleased to communicate to you the names of the persons who will serve as special representatives of Honduras in the bilateral talks.

Accept, Madam, the renewed assurance of my highest consideration.

(*Signed*) Guillermo **Pérez-Cadalso Arias**
Minister for Foreign Affairs

Her Excellency Mrs. María Eugenia Brizuela de Avila
Minister for Foreign Affairs
Republic of El Salvador

Appendix 7

Ministry of Foreign Affairs
Republic of El Salvador

San Salvador, 15 October 2002

Sir,

I have the honour to refer to note No. 087-DSM of 9 September 2002 in which you refer to the exchanges of notes between our two Governments and, in particular, to my note No. 27/02 of 3 April 2002 referring to the cordial invitation extended by Honduras in the note of 7 August 2000 for our two States, as sole riparians of the Bahía de La Unión in which the three-nautical-mile belts of the two States overlap, to commence the delimitation thereof, in the fullest spirit of fraternity, by means of special representatives.

In your note, you also refer to our statement that our Government has expressed its agreement to the appointment of special representatives from both States in order to begin the negotiations for the delimitation of those waters of the two States which overlap in the belts over which El Salvador and Honduras have jurisdiction in their exclusive maritime coastal areas adjacent to the mainland and islands.

In the same note to which you refer, namely, that of 3 April 2002, I told you with due respect that my Government believes that the joint commission to be entrusted with this process will have to be guided in its negotiations by the 9 March 1917 Judgment of the Central American Court of Justice, the 11 September 1992 Judgment of the International Court of Justice, State practice and the principles and norms of international law.

The foregoing must be interpreted in relation to what we said in our note of 9 November 2001, which read as follows: "Accordingly, my Government agrees to the appointment of special representatives from both States in order to begin the negotiations for the delimitation or demarcation of those waters in which, because of their proximity, the belts overlap over which the two States have jurisdiction in their exclusive maritime coastal areas adjacent to the mainland and islands, including the maritime spaces of the Salvadoran islands of Meanguera and Meanguerita and the maritime spaces of the Honduran island of El Tigre, on the basis of an arrangement or agreement in keeping with the principles recognized by international law. Further, my Government understands your offer to mean that the said representatives will take account, in the dialogue to be held on the maritime spaces contiguous to the mainland and islands, of the special situation of the maritime spaces contiguous to the Salvadoran island of Conejo, so that by means of a frank and sincere dialogue we may reach agreements that are fair to both States. My Government wishes to

His Excellency Mr. Guillermo Pérez-Cadalso Arias
Minister for Foreign Affairs
Republic of Honduras

state expressly that the commencement of this frank and sincere dialogue proposed by your Government and accepted by mine in a spirit of cooperation and good faith does not mean that the State of El Salvador waives its right to use the remedy of revision within a period of 10 years in the event of the existence of a new fact, with regard to both the maritime area in question and the Salvadoran islands to which the three miles of maritime space are contiguous, the delta of the river Goascorán and the remaining sectors that were the subject of a dispute, unless the talks between our respective representatives result in an agreement."

I have deemed it necessary to refer to what our country said in the above-mentioned notes because of what your note of 9 September 2002 says next, namely, that your Government also wishes to assure me of its fraternal feelings towards my country and my Government in respect of any discussions that might result in new agreements concerning the waters both inside and outside the Bay of Fonseca, on the understanding that the Judgment of the International Court of Justice of 11 September 1992 incorporates and subsumes the 1917 Judgment of the Central American Court of Justice, the principles and norms of international law and the practice of riparian States of the Gulf.

While also assuring you of our Government's fraternal and sincere feelings towards your country and your Government, I wish to reiterate that, as stated in our note of 9 November 2001, the purpose of the dialogue was to initiate talks between our two States on those waters which, in theory, could be divided bilaterally in the Gulf of Fonseca, in other words, those areas in which there is an overlap between the exclusive zones or territorial seas of the waters under the jurisdiction of the two States adjacent to their mainland and islands, the reason being that this is a matter which can be resolved bilaterally by Honduras and El Salvador, since the overlap does not give rise to joint ownership and must be the subject of an agreement in keeping with international law, as the 1917 Judgment indicated. I also wish to recall that, in the same note, we made the following proviso: "My Government wishes to state expressly that the commencement of this frank and sincere dialogue proposed by your Government and accepted by mine in a spirit of cooperation and good faith does not mean that the State of El Salvador waives its right to use the remedy of revision within a period of 10 years in the event of the existence of a new fact, with regard to both the maritime area in question and the Salvadoran islands to which the three miles of maritime space are contiguous, the delta of the river Goascorán and the remaining sectors that were the subject of a dispute, unless the talks between our respective representatives result in an agreement".

The fact is that we received your note after the submission to the International Court of Justice, on 10 September 2002, of our application for revision of the 1992 Judgment, specifically the decision on the sixth and last sector of the land frontier, namely, the delta of the river Goascorán. Since the waters which were to have been the subject of the dialogue between our two States are largely adjacent to the area now under discussion as a result of the submission of our application for revision, our Government believes that there would be no point in commencing a dialogue on the area now subject to revision until the International Court of Justice has taken the corresponding legal decision on El Salvador's application. Accordingly, and in a spirit of good faith, my Government suggests to the Government of Honduras that we should await the final outcome of the application before agreeing how to proceed.

We should like to draw attention to the part of your note of 9 September 2002 in which you refer to "any discussions that might result in new agreements concerning the waters both inside and outside the Bay of Fonseca", for we have checked our archives and, other than the Memorandum of Understanding signed by the Chiefs of Navies of El Salvador, Honduras and Nicaragua in the port of Corinto, Nicaragua, on 8 March 2002 and ratified by the Presidents of the three countries in the Pochomil Presidential Declaration of 12 March 2002, we have found no record of any agreement on the remaining waters of the Gulf, much less those outside the Bay of Fonseca. Besides, such an agreement could never be bilateral, i.e. between El Salvador and Honduras alone, since the very nature of things, the geography of the Gulf and the express terms of the 1992 Judgment require that there be agreement among all three States. In other words, the Republic of Nicaragua must be a party to any agreement.

Moreover, while my Government stated in its note of 3 April 2002 that the joint commission to be entrusted with the process will have to be guided in its negotiations by the 9 March 1917 Judgment of the Central American Court of Justice, the 11 September 1992 Judgment of the International Court of Justice, State practice and the principles and norms of international law, it did so in order to establish the different sources or elements that make up or influence the legal regime of the Gulf of Fonseca; it was not its intention to establish any hierarchy among them. Accordingly, we are very struck by the following statement in your note of 9 September 2002: "on the understanding that the Judgment of the International Court of Justice of 11 September 1992 incorporates and subsumes the 1917 Judgment of the Central American Court of Justice, the principles and norms of international law and the practice of riparian States of the Gulf".

My Government regrets that it must expressly reject the above statement, for we have at no time interpreted the scope and content of the 11 September 1992 Judgment as incorporating and subsuming the Judgment of the Central American Court of Justice. First of all, the 1917 Judgment was not the subject of the dispute and is mentioned nowhere in the 1992 Judgment and, secondly, a true interpretation, valid for all three States of the legal regime governing the Gulf, can only be made with the consent and active participation of the Republic of Nicaragua and not bilaterally.

Similar considerations apply with respect to the reference to the principles and norms of international law and the practice of riparian States of the Gulf.

Accept, Sir, the renewed assurances of my highest consideration.

(*Signed*) María Eugenia **Brizuela de Avila**
Minister for Foreign Affairs